

UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

**RC PETITION**

**DO NOT WRITE IN THIS SPACE**

Case No.  
**13-RC-295213**

Date Filed  
**5/5/2022**

**INSTRUCTIONS: Unless e-Filed using the Agency's website, [www.nlr.gov](http://www.nlr.gov), submit an original of this Petition to an NLRB office in the Region in which the employer concerned is located. The petition must be accompanied by both a showing of interest (see 6b below) and a certificate of service showing service on the employer and all other parties named in the petition of: (1) the petition; (2) Statement of Position form (Form NLRB-505); and (3) Description of Representation Case Procedures (Form NLRB 4812). The showing of interest should only be filed with the NLRB and should not be served on the employer or any other party.**

**1. PURPOSE OF THIS PETITION: RC-CERTIFICATION OF REPRESENTATIVE** - A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees. **The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.**

**2a. Name of Employer**  
Sebert Landscaping Company

**2b. Address(es) of Establishment(s) involved (Street and number, city, State, ZIP code)**  
1550 W. Bartlett Road, Bartlett, IL 60103

**3a. Employer Representative - Name and Title**  
Jeffrey A. Sebert, President/Owner

**3b. Address (If same as 2b - state same)**  
same

**3c. Tel. No.**  
630-497-1000

**3d. Cell No.**

**3e. Fax No.**  
630-497-1002

**3f. E-Mail Address**  
jeff@sebert.com

**4a. Type of Establishment (Factory, mine, wholesaler, etc.)**  
Service provider

**4b. Principal product or service**  
Landscaping services

**5a. City and State where unit is located:**  
Bartlett, IL

**5b. Description of Unit Involved**

**Included:** All regular full and part-time mechanics, mechanic helpers, and parts employees employed at all facilities covered by the Landscape Agreement with Local 150.

**Excluded:** Office and clerical employees, professional employees, sales representatives, guards and supervisors, as defined under the Act.

**6a. No. of Employees in Unit:**  
9

**6b. Do a substantial number (30% or more) of the employees in the unit wish to be represented by the Petitioner? Yes ☒ No ☐**

**Check One:** ☐ 7a. Request for recognition as Bargaining Representative was made on (Date) N/A and Employer declined recognition on or about N/A (Date) (If no reply received, so state). N/A

☐ 7b. Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.

**8a. Name of Recognized or Certified Bargaining Agent (If none, so state).**  
N/A

**8b. Address**  
N/A

**8c. Tel. No.**  
N/A

**8d. Cell No.**  
N/A

**8e. Fax No.**  
N/A

**8f. E-Mail Address**  
N/A

**8g. Affiliation, if any**  
N/A

**8h. Date of Recognition or Certification**  
N/A

**8i. Expiration Date of Current or Most Recent Contract, if any (Month, Day, Year)**  
N/A

**9. Is there now a strike or picketing at the Employer's establishment(s) involved? No If so, approximately how many employees are participating? N/A**  
(Name of labor organization) N/A, has picketed the Employer since (Month, Day, Year) N/A.

**10. Organizations or individuals other than Petitioner and those named in items 8 and 9, which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in item 5b above. (If none, so state)**  
N/A

**10a. Name**  
N/A

**10b. Address**  
N/A

**10c. Tel. No.**  
N/A

**10d. Cell No.**  
N/A

**10e. Fax No.**  
N/A

**10f. E-Mail Address**  
N/A

**11. Election Details:** If the NLRB conducts an election in this matter, state your position with respect to any such election.

**11a. Election Type:** ☒ Manual ☐ Mail ☐ Mixed Manual/Mail

**11b. Election Date(s):**  
May 20, 2022

**11c. Election Time(s):**  
6:30 a.m. - 7:30 a.m.

**11d. Election Location(s):**  
Employer's Bartlett shop breakroom

**12a. Full Name of Petitioner (including local name and number)**  
International Union of Operating Engineers, Local 150, AFL-CIO

**12b. Address (street and number, city, state, and ZIP code)**  
6200 Joliet Road, Countryside, Illinois, 60525

**12c. Full name of national or international labor organization of which Petitioner is an affiliate or constituent (if none, so state)**  
International Union of Operating Engineers

**12d. Tel. No.**  
708-482-8800

**12e. Cell No.**  
N/A

**12f. Fax No.**  
708-588-1647

**12g. E-Mail Address**  
N/A

**13. Representative of the Petitioner who will accept service of all papers for purposes of the representation proceeding.**

**13a. Name and Title**  
Brad H. Russell, Associate General Counsel

**13b. Address (street and number, city, state, and ZIP code)**  
6140 Joliet Road, Countryside, Illinois, 60525

**13c. Tel. No.**  
708-579-6669

**13d. Cell No.**  
N/A

**13e. Fax No.**  
708-588-1647

**13f. E-Mail Address**  
brussell@local150.org

**I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.**

**Name (Print)**  
Brad H. Russell

**Signature**  
s/ Brad H. Russell

**Title**  
Associate General Counsel

**Date**  
5/4/2022

**WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)**

**PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.



UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

REGION 13  
Dirksen Federal Building  
219 South Dearborn Street, Suite 808  
Chicago, IL 60604-2027

Agency Website: [www.nlrb.gov](http://www.nlrb.gov)  
Telephone: (312)353-7570  
Fax: (312)886-1341



Download  
NLRB  
Mobile App

**URGENT**

May 5, 2022

Jeffrey Sebert, President  
Sebert Landscaping Company  
1550 W Bartlett Road  
Bartlett, IL 60103  
[jeff@sebert.com](mailto:jeff@sebert.com)

Re: Sebert Landscaping Company  
Case 13-RC-295213

Dear Mr. Sebert:

Enclosed is a copy of a petition that IOUE, Local 150, AFL-CIO Legal Department filed with the National Labor Relations Board (NLRB) seeking to represent certain of your employees. After a petition is filed, the employer is required to promptly take certain actions so please read this letter carefully to make sure you are aware of the employer's obligations. This letter tells you how to contact the Board agent who will be handling this matter, about the requirement to post and distribute the Notice of Petition for Election, the requirement to complete and serve a Statement of Position Form, the Petitioner's requirement to complete and serve a Responsive Statement of Position Form, a scheduled hearing in this matter, other information needed including a voter list, your right to be represented, and NLRB procedures, including how to submit documents to the NLRB.

**Investigator:** This petition will be investigated by Field Examiner Christopher J. Lee whose telephone number is (312)353-9777 and whose e-mail address is [christopher.lee@nlrb.gov](mailto:christopher.lee@nlrb.gov). The Board agent will contact you shortly to discuss processing the petition. If you have any questions, please do not hesitate to call the Board agent. If the agent is not available, you may contact Supervisory Examiner Kate Gianopulos whose telephone number is (312)353-4162. The Board agent may also contact you and the other party or parties to schedule a conference meeting or telephonic or video conference for some time before the close of business the day following receipt of the final Responsive Statement(s) of Position. This will give the parties sufficient time to determine if any issues can be resolved prior to hearing or if a hearing is necessary. If appropriate, the NLRB attempts to schedule an election either by agreement of the parties or by holding a hearing and then directing an election.

**Required Posting and Distribution of Notice:** You must post the enclosed Notice of Petition for Election by May 12, 2022 in conspicuous places, including all places where notices to employees are customarily posted. The Notice of Petition for Election must be posted so all pages are simultaneously visible. If you customarily communicate electronically with employees in the petitioned-for unit, you must also distribute the notice electronically to them. You must maintain the posting until the petition is dismissed or withdrawn or this notice is replaced by the

Notice of Election. Posting and distribution of the Notice of Petition for Election will inform the employees whose representation is at issue and the employer of their rights and obligations under the National Labor Relations Act in the representation context. Failure to post or distribute the notice may be grounds for setting aside an election if proper and timely objections are filed.

**Required Statement of Position:** In accordance with Section 102.63(b) of the Board's Rules, the employer is required to complete the enclosed Statement of Position form (including the attached Commerce Questionnaire), have it signed by an authorized representative, and file a completed copy (with all required attachments) with this office and serve it on all parties named in the petition such that it is received by them by **noon Central Time on Tuesday, May 17, 2022**. This form solicits information that will facilitate entry into election agreements or streamline the pre-election hearing if the parties are unable to enter into an election agreement. **This form must be e-Filed, but unlike other e-Filed documents, will *not* be timely if filed on the due date but after noon Central Time.** If you have questions about this form or would like assistance in filling out this form, please contact the Board agent named above.

*List(s) of Employees:* The employer's Statement of Position must include a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit as of the payroll period preceding the filing of the petition who remain employed at the time of filing. If the employer contends that the proposed unit is inappropriate, the employer must separately list the full names, work locations, shifts and job classifications of all individuals that it contends must be added to the proposed unit to make it an appropriate unit. The employer must also indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit. These lists must be alphabetized (overall or by department). Unless the employer certifies that it does not possess the capacity to produce the lists in the required form, the lists must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [www.nlr.gov/sites/default/files/attachments/basic-page/node-4559/Optional Forms for Voter List.docx](http://www.nlr.gov/sites/default/files/attachments/basic-page/node-4559/Optional%20Forms%20for%20Voter%20List.docx)

*Failure to Supply Information:* Failure to supply the information requested by this form may preclude you from litigating issues under Section 102.66(d) of the Board's Rules and Regulations. Section 102.66(d) provides as follows:

A party shall be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party shall be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing,

from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross-examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. If the employer fails to timely furnish the lists of employees described in §§ 102.63(b)(1)(iii), (b)(2)(iii), or (b)(3)(iii), the employer shall be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

**Responsive Statement of Position:** In accordance with Section 102.63(b) of the Board's Rules, following timely filing and service of an employer's Statement of Position, the petitioner is required to complete the enclosed Responsive Statement of Position form, have it signed by an authorized representative, and file a completed copy with any necessary attachments, with this office and serve it on all parties named in the petition responding to the issues raised in the employer's Statement of Position, such that it is received no later than **noon Central Time on Friday, May 20, 2022.**

**Notice of Hearing:** Enclosed is a Notice of Representation Hearing to be conducted at **9:00 AM on Wednesday, May 25, 2022** via ZOOM Videoconference or at, **219 S Dearborn Street, Suite 808, Chicago, IL 60604**, if the parties do not voluntarily agree to an election. If a hearing is necessary, the hearing will run on consecutive days until concluded unless the regional director concludes that extraordinary circumstances warrant otherwise. Before the hearing begins, the NLRB will continue to explore potential areas of agreement with the parties in order to reach an election agreement and to eliminate or limit the costs associated with formal hearings.

Upon request of a party showing good cause, the regional director may postpone the hearing. A party desiring a postponement should make the request to the regional director in writing, set forth in detail the grounds for the request, and include the positions of the other parties regarding the postponement. E-Filing the request is required. A copy of the request must be served simultaneously on all the other parties, and that fact must be noted in the request.

**Other Information Needed Now:** Please submit to this office, as soon as possible, the following information needed to handle this matter:

- (a) A copy of any existing or recently expired collective-bargaining agreements, and any amendments or extensions, or any recognition agreements covering any of your employees in the unit involved in the petition (the petitioned-for unit);

- (b) The name and contact information for any other labor organization (union) claiming to represent any of the employees in the petitioned-for unit;
- (c) If potential voters will need notices or ballots translated into a language other than English, the names of those languages and dialects, if any.
- (d) If you desire a formal check of the showing of interest, you must provide an alphabetized payroll list of employees in the petitioned-for unit, with their job classifications, for the payroll period immediately before the date of this petition. Such a payroll list should be submitted as early as possible prior to the hearing. Ordinarily a formal check of the showing of interest is not performed using the employee list submitted as part of the Statement of Position.

**Voter List:** If an election is held in this matter, the employer must transmit to this office and to the other parties to the election, an alphabetized list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cellular telephone numbers) of eligible voters. Usually, the list must be furnished within 2 business days of the issuance of the Decision and Direction of Election or approval of an election agreement. I am advising you of this requirement now, so that you will have ample time to prepare this list. The list must be electronically filed with the Region and served electronically on the other parties. To guard against potential abuse, this list may not be used for purposes other than the representation proceeding, NLRB proceedings arising from it or other related matters.

**Right to Representation:** You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing Form NLRB-4701, Notice of Appearance. This form is available on our website, [www.nlr.gov](http://www.nlr.gov), or at the Regional office upon your request.

If someone contacts you about representing you in this case, please be assured that no organization or person seeking your business has any “inside knowledge” or favored relationship with the NLRB. Their knowledge regarding this matter was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

**Procedures:** Pursuant to Section 102.5 of the Board’s Rules and Regulations, parties must submit all documentary evidence, including statements of position, exhibits, sworn statements, and/or other evidence, by electronically submitting (E-Filing) them through the Agency’s web site ([www.nlr.gov](http://www.nlr.gov)). You must e-file all documents electronically or provide a written statement explaining why electronic submission is not possible or feasible. Failure to comply with Section 102.5 will result in rejection of your submission. The Region will make its determinations solely based on the documents and evidence properly submitted. All evidence submitted electronically should be in the form in which it is normally used and maintained in the course of business (i.e., native format). Where evidence submitted electronically is not in native format, it should be submitted in a manner that retains the essential functionality of the native

format (i.e., in a machine-readable and searchable electronic format). If you have questions about the submission of evidence or expect to deliver a large quantity of electronic records, please promptly contact the Board agent investigating the petition.

Information about the NLRB and our customer service standards is available on our website, [www.nlr.gov](http://www.nlr.gov), or from an NLRB office upon your request. We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

A handwritten signature in black ink, reading "Daniel N. Nelson". The signature is written in a cursive, flowing style.

Daniel N. Nelson  
Acting Regional Director

Enclosures

1. Petition
2. Notice of Petition for Election (Form 5492)
3. Notice of Representation Hearing
4. Description of Procedures in Certification and Decertification Cases (Form 4812)
5. Statement of Position form and Commerce Questionnaire (Form 505)
6. Responsive Statement of Position (Form 506)



## National Labor Relations Board



# NOTICE OF PETITION FOR ELECTION

This notice is to inform employees that IOUE, LOCAL 150, AFL-CIO LEGAL DEPARTMENT has filed a petition with the National Labor Relations Board (NLRB), a Federal agency, in Case 13-RC-295213 seeking an election to become certified as the representative of the employees of Sebert Landscaping Company in the unit set forth below:

**Included:** All regular full and part-time mechanics, mechanic helpers, and parts employees employed at all facilities covered by the Landscape Agreement with Local 150.

**Excluded:** Office and clerical employees, professional employees, sale representatives, guards and supervisors, as defined under the Act.

This notice also provides you with information about your basic rights under the National Labor Relations Act, the processing of the petition, and rules to keep NLRB elections fair and honest.

## YOU HAVE THE RIGHT under Federal Law

- To self-organization
- To form, join, or assist labor organizations
- To bargain collectively through representatives of your own choosing
- To act together for the purposes of collective bargaining or other mutual aid or protection
- To refuse to do any or all of these things unless the union and employer, in a state where such agreements are permitted, enter into a lawful union-security agreement requiring employees to pay periodic dues and initiation fees. Nonmembers who inform the union that they object to the use of their payments for nonrepresentational purposes may be required to pay only their share of the union's costs of representational activities (such as collective bargaining, contract administration, and grievance adjustments).

## PROCESSING THIS PETITION

Elections do not necessarily occur in all cases after a petition is filed. **NO FINAL DECISIONS HAVE BEEN MADE YET** regarding the appropriateness of the proposed unit or whether an election will be held in this matter. If appropriate, the NLRB will first see if the parties will enter into an election agreement that specifies the method, date, time, and location of an election and the unit of employees eligible to vote. If the parties do not enter into an election agreement, usually a hearing is held to receive evidence on the appropriateness of the unit and other issues in dispute. After a hearing, an election may be directed by the NLRB, if appropriate.

**IF AN ELECTION IS HELD**, it will be conducted by the NLRB by secret ballot and Notices of Election will be posted before the election giving complete details for voting.



# ELECTION RULES

The NLRB applies rules that are intended to keep its elections fair and honest and that result in a free choice. If agents of any party act in such a way as to interfere with your right to a free election, the election can be set aside by the NLRB. Where appropriate the NLRB provides other remedies, such as reinstatement for employees fired for exercising their rights, including backpay from the party responsible for their discharge.

The following are examples of conduct that interfere with employees' rights and may result in setting aside the election:

- Threatening loss of jobs or benefits by an employer or a union
- Promising or granting promotions, pay raises, or other benefits, to influence an employee's vote by a party capable of carrying out such promises
- An employer firing employees to discourage or encourage union activity or a union causing them to be fired to encourage union activity
- Making campaign speeches to assembled groups of employees on company time, where attendance is mandatory, within the 24-hour period before the polls for the election first open or, if the election is conducted by mail, from the time and date the ballots are scheduled to be sent out by the Region until the time and date set for their return
- Incitement by either an employer or a union of racial or religious prejudice by inflammatory appeals
- Threatening physical force or violence to employees by a union or an employer to influence their votes

Please be assured that IF AN ELECTION IS HELD, every effort will be made to protect your right to a free choice under the law. Improper conduct will not be permitted. All parties are expected to cooperate fully with the NLRB in maintaining basic principles of a fair election as required by law. The NLRB as an agency of the United States Government does not endorse any choice in the election.

For additional information about the processing of petitions, go to [www.nlr.gov](http://www.nlr.gov) or contact the NLRB at (312)353-7570.

THIS IS AN OFFICIAL GOVERNMENT NOTICE AND MUST NOT BE DEFACED BY ANYONE. IT MUST REMAIN POSTED WITH ALL PAGES SIMULTANEOUSLY VISIBLE UNTIL REPLACED BY THE NOTICE OF ELECTION OR THE PETITION IS DISMISSED OR WITHDRAWN.



## National Labor Relations Board







**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 13**



<b>Sebert Landscaping Company</b> <b>Employer</b>  <b>and</b> <b>IOUE, Local 150, AFL-CIO Legal Department</b> <b>Petitioner</b>	<b>Case 13-RC-295213</b>
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**NOTICE OF REPRESENTATION HEARING**

The Petitioner filed the attached petition pursuant to Section 9(c) of the National Labor Relations Act. It appears that a question affecting commerce exists as to whether the employees in the unit described in the petition wish to be represented by a collective-bargaining representative as defined in Section 9(a) of the Act.

YOU ARE HEREBY NOTIFIED that, pursuant to Sections 3(b) and 9(c) of the Act, at 9:00 AM on **Wednesday, May 25, 2022** and on consecutive days thereafter until concluded via ZOOM Videoconference or at the National Labor Relations Board offices located at, 219 S Dearborn Street, Suite 808, Chicago, IL 60604, a hearing will be conducted before a hearing officer of the National Labor Relations Board. At the hearing, the parties will have the right to appear in person or otherwise, and give testimony.

YOU ARE FURTHER NOTIFIED that, pursuant to Section 102.63(b) of the Board's Rules and Regulations, Sebert Landscaping Company must complete the Statement of Position and file it and all attachments with the Regional Director and serve it on the parties listed on the petition such that is received by them by no later than **noon** Central time on **Tuesday, May 17, 2022**. Following timely filing and service of a Statement of Position by Sebert Landscaping Company, the Petitioner must complete its Responsive Statement of Position(s) responding to the issues raised in the Employer's and/or Union's Statement of Position and file them and all attachments with the Regional Director and serve them on the parties named in the petition such that they are received by them no later than **noon** Central on **Friday, May 20, 2022**.

**Pursuant to Section 102.5 of the Board's Rules and Regulations, all documents filed in cases before the Agency must be filed by electronically submitting (E-Filing) through the Agency's website ([www.nlrb.gov](http://www.nlrb.gov)), unless the party filing the document does not have access to the means for filing electronically or filing electronically would impose an undue burden.** Documents filed by means other than E-Filing must be accompanied by a statement explaining why the filing party does not have access to the means for filing electronically or filing electronically would impose an undue burden. Detailed instructions for using the NLRB's E-Filing system can be found in the [E-Filing System User Guide](#)

The Statement of Position and Responsive Statement of Position must be E-Filed but, unlike other E-Filed documents, must be filed by **noon** Central on the due date in order to be timely. If an election agreement is signed by all parties and returned to the Regional Office before the due date of the Statement of Position, the Statement of Position and Responsive Statement of Position are not required to be filed. If an election agreement is signed by all parties and returned to the Regional office after the due date of the Statement of Position but before the due date of the Responsive Statement of Position, the Responsive Statement of Position is not required to be filed.

Dated: May 5, 2022

/s/ **Daniel N Nelson**  
Daniel N. Nelson  
Acting Regional Director  
National Labor Relations Board  
Region 13  
Dirksen Federal Building  
219 South Dearborn Street, Suite 808  
Chicago, IL 60604-2027

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

<b>Sebert Landscaping Company</b> <b>Employer</b>  <b>and</b> <b>IOUE, Local 150, AFL-CIO Legal Department</b> <b>Petitioner</b>	<b>Case 13-RC-295213</b>
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**AFFIDAVIT OF SERVICE OF: Petition dated May 5, 2022, Notice of Representation Hearing dated May 5, 2022, Description of Procedures in Certification and Decertification Cases (Form NLRB-4812), Notice of Petition for Election, and Statement of Position Form (Form NLRB-505).**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on May 5, 2022, I served the above documents by electronic mail and regular mail upon the following persons, addressed to them at the following addresses:

Jeffrey Sebert, President  
Sebert Landscaping Company  
1550 W Bartlett Road  
Bartlett, IL 60103  
[jeff@sebert.com](mailto:jeff@sebert.com)

IOUE, Local 150, AFL-CIO Legal  
Department  
6200 Joliet Rd  
Countryside, IL 60525-3992

Brad H. Russell, Attorney  
Local 150 Legal Department  
6140 Joliet Road  
Countryside, IL 60525  
[brussell@local150.org](mailto:brussell@local150.org)

May 5, 2022

Date

Brendan Zarling, Designated Agent of NLRB

Name

/s/ Brendan Zarling

Signature

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD

**DESCRIPTION OF REPRESENTATION CASE PROCEDURES  
IN CERTIFICATION AND DECERTIFICATION CASES**

The National Labor Relations Act grants employees the right to bargain collectively through representatives of their own choosing and to refrain from such activity. A party may file an RC, RD or RM petition with the National Labor Relations Board (NLRB) to conduct a secret ballot election to determine whether a representative will represent, or continue to represent, a unit of employees. An **RC** petition is generally filed by a union that desires to be certified as the bargaining representative. An **RD** petition is filed by employees who seek to remove the currently recognized union as the bargaining representative. An **RM** petition is filed by an employer who seeks an election because one or more individuals or unions have sought recognition as the bargaining representative, or based on a reasonable belief supported by objective considerations that the currently recognized union has lost its majority status. This form generally describes representation case procedures in RC, RD and RM cases, also referred to as certification and decertification cases.

**Right to be Represented** – Any party to a case with the NLRB has the right to be represented by an attorney or other representative in any proceeding before the NLRB. A party wishing to have a representative appear on its behalf should have the representative complete a Notice of Appearance (Form NLRB-4701), and E-File it at [www.nlr.gov](http://www.nlr.gov) or forward it to the NLRB Regional Office handling the petition as soon as possible.

**Filing and Service of Petition** – A party filing an RC, RD or RM petition is required to serve a copy of its petition on the parties named in the petition along with this form and the Statement of Position form. The petitioner files the petition with the NLRB, together with (1) a certificate showing service of these documents on the other parties named in the petition, and (2) a showing of interest to support the petition. The showing of interest is not served on the other parties.

**Notice of Hearing** – After a petition in a certification or decertification case is filed with the NLRB, the NLRB reviews the petition, certificate of service, and the required showing of interest for sufficiency, assigns the petition a case number, and promptly sends letters to the parties notifying them of the Board agent who will be handling the case. In most cases, the letters include a Notice of Representation Hearing. Except in cases presenting unusually complex issues, this pre-election hearing is set for a date 14 business days (excluding weekends and federal holidays) from the date of service of the notice of hearing. Once the hearing begins, it will continue day to day until completed absent extraordinary circumstances. The Notice of Representation Hearing also sets the due date for filing and serving the Statement(s) of Position and the Responsive Statement of Position(s). Included with the Notice of Representation Hearing are the following: (1) copy of the petition, (2) this form, (3) Statement of Position for non-petitioning parties, (4) petitioner's Responsive Statement of Position, (5) Notice of Petition for Election, and (6) letter advising how to contact the Board agent who will be handling the case and discussing those documents.

**Hearing Postponement:** Requests to postpone the hearing are not routinely granted, but the regional director may postpone the hearing for good cause. A party wishing to request a postponement should make the request in writing and set forth in detail the grounds for the request. The request should include the positions of the other parties regarding the postponement. The request must be filed electronically ("E-Filed") on the Agency's website ([www.nlr.gov](http://www.nlr.gov)) by following the instructions on the website. A copy of the request must be served simultaneously on all the other parties, and that fact must be noted in the request.

**Statement of Position Form and List(s) of Employees** – The Statement of Position form solicits commerce and other information that will facilitate entry into election agreements or streamline the pre-election hearing if the parties are unable to enter into an election agreement. In an **RC** or **RD** case, as part of its Statement of Position form, the employer also provides a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit. If the employer contends that the proposed unit is not appropriate, the employer must separately list the same information for all individuals that the employer contends must be added to the proposed unit to make it an appropriate unit, and must further indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit. These lists must be alphabetized (overall or by department). Unless the employer certifies that it does not possess the capacity to produce the lists in the required form, the lists must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional

form for the list is provided on the NLRB website at [www.nlr.gov/sites/default/files/attachments/basic-page/node-4559/Optional Forms for Voter List.docx](http://www.nlr.gov/sites/default/files/attachments/basic-page/node-4559/Optional Forms for Voter List.docx)

Ordinarily the Statement of Position must be filed with the Regional Office and served on the other parties such that it is received by them by noon 8 business days from the issuance of the Notice of Hearing. The regional director may postpone the due date for filing and serving the Statement of Position for good cause. The Statement of Position form must be E-Filed but, unlike other E-Filed documents, will not be timely if filed on the due date but after noon in the time zone of the Region where the petition is filed. Consequences for failing to satisfy the Statement of Position requirement are discussed on the following page under the heading "Preclusion." A request to postpone the hearing will not automatically be treated as a request for an extension of the Statement of Position due date. If a party wishes to request both a postponement of the hearing and a postponement of the Statement of Position due date, the request must make that clear and must specify the reasons that postponements of both are sought.

**Responsive Statement of Position** – Petitioner's Responsive Statement(s) of Position solicits a response to the Statement(s) of Position filed by the other parties and further facilitates entry into election agreements or streamlines the preelection hearing. A petitioner must file a Responsive Statement of Position in response to each party's Statement of Position addressing each issue in each Statement of Position(s), if desired. In the case of an RM petition, the employer-petitioner must also provide commerce information and file and serve a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit. Ordinarily, the Responsive Statement of Position must be electronically filed with the Regional Office and served on the other parties such that it is received by noon 3 business days prior to the hearing. The regional director may postpone the due date for filing and serving the Responsive Statement of Position for good cause. The Responsive Statement of Position form must be E-Filed but, unlike other E-Filed documents, will not be timely if filed on the due date but after noon in the time zone of the Region where the petition is filed. Consequences for failing to satisfy the Responsive Statement of Position requirement are discussed on the following page under the heading "Preclusion." A request to postpone the hearing will not automatically be treated as a request for an extension of the Responsive Statement of Position due date. If a party wishes to request both a postponement of the hearing and a Postponement of the Responsive Statement of Position due date, the request must make that clear and must specify the reasons that postponements of both are sought.

**Posting and Distribution of Notice of Petition for Election** – Within 5 business days after service of the notice of hearing, the employer must post the Notice of Petition for Election in conspicuous places, including all places where notices to employees are customarily posted, and must also distribute it electronically to the employees in the petitioned-for unit if the employer customarily communicates with these employees electronically. The employer must maintain the posting until the petition is dismissed or withdrawn, or the Notice of Petition for Election is replaced by the Notice of Election. The employer's failure properly to post or distribute the Notice of Petition for Election may be grounds for setting aside the election if proper and timely objections are filed.

**Election Agreements** – Elections can occur either by agreement of the parties or by direction of the regional director or the Board. Three types of agreements are available: (1) a Consent Election Agreement (Form NLRB-651); (2) a Stipulated Election Agreement (Form NLRB-652); and (3) a Full Consent Agreement (Form NLRB-5509). In the Consent Election Agreement and the Stipulated Election Agreement, the parties agree on an appropriate unit and the method, date, time, and place of a secret ballot election that will be conducted by an NLRB agent. In the Consent Agreement, the parties also agree that post-election matters (election objections or determinative challenged ballots) will be resolved with finality by the regional director; whereas in the Stipulated Election Agreement, the parties agree that they may request Board review of the regional director's post-election determinations. A Full Consent Agreement provides that the regional director will make final determinations regarding all pre-election and post-election issues.

**Hearing Cancellation Based on Agreement of the Parties** – The issuance of the Notice of Representation Hearing does not mean that the matter cannot be resolved by agreement of the parties. On the contrary, the NLRB encourages prompt voluntary adjustments and the Board agent assigned to the case will work with the parties to enter into an election agreement, so the parties can avoid the time and expense of participating in a hearing.

**Hearing** – A hearing will be held unless the parties enter into an election agreement approved by the regional director or the petition is dismissed or withdrawn.

**Purpose of Hearing:** The primary purpose of a pre-election hearing is to determine if a question of representation exists. A question of representation exists if a proper petition has been filed concerning a unit

appropriate for the purpose of collective bargaining or, in the case of a decertification petition, concerning a unit in which a labor organization has been certified or is being currently recognized by the employer as the bargaining representative.

**Issues at Hearing:** Issues that might be litigated at the pre-election hearing include: jurisdiction; labor organization status; bars to elections; unit appropriateness; expanding and contracting unit issues; inclusion of professional employees with nonprofessional employees; seasonal operation; potential mixed guard/non-guard unit; and eligibility formulas. At the hearing, the timely filed Statement of Position and Responsive Statement of Position(s) will be received into evidence. The hearing officer will not receive evidence concerning any issue as to which the parties have not taken adverse positions, except for evidence regarding the Board's jurisdiction over the employer and evidence concerning any issue, such as the appropriateness of the proposed unit, as to which the regional director determines that record evidence is necessary.

**Preclusion:** At the hearing, a party will be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or Responsive Statement of Position(s) or to place in dispute in timely response to another party's Statement of Position or response, except that no party will be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. As set forth in §102.66(d) of the Board's rules, if the employer fails to timely furnish the lists of employees, the employer will be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

**Conduct of Hearing:** If held, the hearing is usually open to the public and will be conducted by a hearing officer of the NLRB. Any party has the right to appear at any hearing in person, by counsel, or by other representative, to call, examine, and cross-examine witnesses, and to introduce into the record evidence of the significant facts that support the party's contentions and are relevant to the existence of a question of representation. The hearing officer also has the power to call, examine, and cross-examine witnesses and to introduce into the record documentary and other evidence. Witnesses will be examined orally under oath. The rules of evidence prevailing in courts of law or equity shall not be controlling. Parties appearing at any hearing who have or whose witnesses have disabilities falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.503, and who in order to participate in this hearing need appropriate auxiliary aids, as defined in 29 C.F.R. 100.503, should notify the regional director as soon as possible and request the necessary assistance.

**Official Record:** An official reporter will make the only official transcript of the proceedings and all citations in briefs or arguments must refer to the official record. (Copies of exhibits should be supplied to the hearing officer and other parties at the time the exhibit is offered in evidence.) All statements made at the hearing will be recorded by the official reporter while the hearing is on the record. If a party wishes to make off-the-record remarks, requests to make such remarks should be directed to the hearing officer and not to the official reporter. After the close of the hearing, any request for corrections to the record, either by stipulation or motion, should be forwarded to the regional director.

**Motions and Objections:** All motions must be in writing unless stated orally on the record at the hearing and must briefly state the relief sought and the grounds for the motion. A copy of any motion must be served immediately on the other parties to the proceeding. Motions made during the hearing are filed with the hearing officer. All other motions are filed with the regional director, except that motions made after the transfer of the record to the Board are filed with the Board. If not E-Filed, an original and two copies of written motions shall be filed. Statements of reasons in support of motions or objections should be as concise as possible. Objections shall not be deemed waived by further participation in the hearing. On appropriate request, objections may be permitted to stand to an entire line of questioning. Automatic exceptions will be allowed to all adverse rulings.

**Election Details:** Prior to the close of the hearing the hearing officer will: (1) solicit the parties' positions (but will not permit litigation) on the type, date(s), time(s), and location(s) of the election and the eligibility period; (2) solicit the name, address, email address, facsimile number, and phone number of the employer's on-site representative to whom the regional director should transmit the Notice of Election if an election is directed; (3) inform the parties that the regional director will issue a decision as soon as practicable and will immediately transmit the document to the parties and their designated representatives by email, facsimile, or by overnight mail (if neither an email address nor facsimile number was provided); and (4) inform the parties of their obligations if the director directs an election and of the time for complying with those obligations.

**Oral Argument and Briefs:** Upon request, any party is entitled to a reasonable period at the close of the hearing for oral argument, which will be included in the official transcript of the hearing. At any time before the close of the hearing, any party may file a memorandum addressing relevant issues or points of law. Post-hearing briefs shall be due within 5 business days of the close of the hearing. The hearing officer may allow up to 10 additional business days for such briefs prior to the close of hearing and for good cause. If filed, copies of the memorandum or brief shall be served on all other parties to the proceeding and a statement of such service shall be filed with the memorandum or brief. No reply brief may be filed except upon special leave of the regional director. Briefs including electronic documents, filed with the Regional Director must be formatted as double-spaced in an 8½ by 11 inch format and must be e-filed through the Board's website, [www.nlr.gov](http://www.nlr.gov).

**Regional Director Decision** - After the hearing, the regional director issues a decision directing an election, dismissing the petition or reopening the hearing. A request for review of the regional director's pre-election decision may be filed with the Board at any time after issuance of the decision until 10 business days after a final disposition of the proceeding by the regional director. Accordingly, a party need not file a request for review before the election in order to preserve its right to contest that decision after the election. Instead, a party can wait to see whether the election results have mooted the basis of an appeal. The Board will grant a request for review only where compelling reasons exist therefor.

**Voter List** – The employer must provide to the regional director and the parties named in the election agreement or direction of election a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cellular ("cell") telephone numbers) of all eligible voters. (In construction industry elections, unless the parties stipulate to the contrary, also eligible to vote are all employees in the unit who either (1) were employed a total of 30 working days or more within the 12 months preceding the election eligibility date or (2) had some employment in the 12 months preceding the election eligibility date and were employed 45 working days or more within the 24 months immediately preceding the election eligibility date. However, employees meeting either of those criteria who were terminated for cause or who quit voluntarily prior to the completion of the last job for which they were employed, are not eligible.) The employer must also include in a separate section of the voter list the same information for those individuals whom the parties have agreed should be permitted to vote subject to challenge or those individuals who, according to the direction of election, will be permitted to vote subject to challenge. The list of names must be alphabetized (overall or by department) and be in the same Microsoft Word file (or Microsoft Word compatible file) format as the initial lists provided with the Statement of Position form unless the parties agree to a different format or the employer certifies that it does not possess the capacity to produce the list in the required form. When feasible, the list must be filed electronically with the regional director and served electronically on the other parties named in the agreement or direction. To be timely filed and served, the voter list must be received by the regional director and the parties named in the agreement or direction respectively within 2 business days after the approval of the agreement or issuance of the direction of elections unless a longer time is specified in the agreement or direction. A certificate of service on all parties must be filed with the regional director when the voter list is filed. The employer's failure to file or serve the list within the specified time or in proper format shall be grounds for setting aside the election whenever proper and timely objections are filed. The parties shall not use the list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

**Waiver of Time to Use Voter List** – Under existing NLRB practice, an election is not ordinarily scheduled for a date earlier than 10 calendar days after the date when the employer must file the voter list with the Regional Office. However, the parties entitled to receive the voter list may waive all or part of the 10-day period by executing Form NLRB-4483. A waiver will not be effective unless all parties who are entitled to the list agree to waive the same number of days.



**Election** – Information about the election, requirements to post and distribute the Notice of Election, and possible proceedings after the election is available from the Regional Office and will be provided to the parties when the Notice of Election is sent to the parties.

**Withdrawal or Dismissal** – If it is determined that the NLRB does not have jurisdiction or that other criteria for proceeding to an election are not met, the petitioner is offered an opportunity to withdraw the petition. If the petitioner does not withdraw the petition, the regional director will dismiss the petition and advise the petitioner of the reason for the dismissal and of the right to appeal to the Board.

## **REVIEW THE FOLLOWING IMPORTANT INFORMATION BEFORE FILLING OUT A STATEMENT OF POSITION FORM**

**Completing and Filing this Form:** The Notice of Hearing indicates which parties are responsible for completing the form. If you are required to complete the form, you must have it signed by an authorized representative and file a completed copy (including all attachments) with the RD and serve copies on all parties named in the petition by the date and time established for its submission. If more space is needed for your answers, additional pages may be attached. If you have questions about this form or would like assistance in filling out this form, please contact the Board agent assigned to handle this case. **You must EFile your Statement of Position at [www.nlr.gov](http://www.nlr.gov), but unlike other e-Filed documents, it will *not* be timely if filed on the due date but after noon in the time zone of the Region where the petition was filed.**

***Note: Non-employer parties who complete this Statement of Position are NOT required to complete items 8f and 8g of the form, or to provide a commerce questionnaire or the lists described in item 7.***

**Required Lists:** The employer's Statement of Position must include a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit as of the payroll period preceding the filing of the petition who remain employed at the time of filing. If the employer contends that the proposed unit is inappropriate, the employer must separately list the full names, work locations, shifts and job classifications of all individuals that it contends must be added to the proposed unit to make it an appropriate unit. The employer must also indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit. These lists must be alphabetized (overall or by department). Unless the employer certifies that it does not possess the capacity to produce the lists in the required form, the lists must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [www.nlr.gov/sites/default/files/attachments/basic-page/node-4559/Optional Forms for Voter List.docx](http://www.nlr.gov/sites/default/files/attachments/basic-page/node-4559/Optional%20Forms%20for%20Voter%20List.docx).

**Consequences of Failure to Supply Information:** Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations. Section 102.66(d) provides as follows:

A party shall be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party shall be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross-examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. If the employer fails to timely furnish the lists of employees described in §§102.63(b)(1)(iii), (b)(2)(iii), or (b)(3)(iii), the employer shall be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
**STATEMENT OF POSITION**

**DO NOT WRITE IN THIS SPACE**

Case No.

13-RC-295213

Date Filed

May 5, 2022

**INSTRUCTIONS:** Submit this Statement of Position to an NLRB Office in the Region in which the petition was filed and serve it and all attachments on each party named in the petition in this case such that it is received by them by the date and time specified in the notice of hearing.

**Note:** Non-employer parties who complete this form are NOT required to complete items 8f or 8g below or to provide a commerce questionnaire or the lists described in item 7.

1a. Full name of party filing Statement of Position		1c. Business Phone:	1e. Fax No.:
1b. Address (Street and number, city, state, and ZIP code)		1d. Cell No.:	1f. e-Mail Address
2. Do you agree that the NLRB has jurisdiction over the Employer in this case? <input type="checkbox"/> Yes <input type="checkbox"/> No (A completed commerce questionnaire (Attachment A) must be submitted by the Employer, regardless of whether jurisdiction is admitted)			
3. Do you agree that the proposed unit is appropriate? <input type="checkbox"/> Yes <input type="checkbox"/> No (If not, answer 3a and 3b )			
a. State the basis for your contention that the proposed unit is not appropriate. (If you contend a classification should be excluded or included briefly explain why, such as shares a community of interest or are supervisors or guards )			
b. State any classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit.			
Added		Excluded	
4. Other than the individuals in classifications listed in 3b, list any individual(s) whose eligibility to vote you intend to contest at the pre-election hearing in this case and the basis for contesting their eligibility.			
5. Is there a bar to conducting an election in this case? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, state the basis for your position.			
6. Describe all other issues you intend to raise at the pre-election hearing.			
7. The employer must provide the following lists which must be alphabetized (overall or by department) in the format specified at <a href="http://www.nlr.gov/sites/default/files/attachments/basic-page/node-4559/Optional%20Forms%20for%20Voter%20List.docx">www.nlr.gov/sites/default/files/attachments/basic-page/node-4559/Optional Forms for Voter List.docx</a> . (a) A list containing the full names, work locations, shifts and job classification of all individuals in the proposed unit as of the payroll period immediately preceding the filing of the petition who remain employed as of the date of the filing of the petition. (Attachment B) (b) If the employer contends that the proposed unit is inappropriate the employer must provide (1) a separate list containing the full names, work locations, shifts and job classifications of all individuals that it contends must be <i>added</i> to the proposed unit, if any to make it an appropriate unit, (Attachment C) and (2) a list containing the full names of any individuals it contends must be <i>excluded</i> from the proposed unit to make it an appropriate unit. (Attachment D)			
8a. State your position with respect to the details of any election that may be conducted in this matter. Type: <input type="checkbox"/> Manual <input type="checkbox"/> Mail <input type="checkbox"/> Mixed Manual/Mail			
8b. Date(s)	8c. Time(s)	8d. Location(s)	
8e. Eligibility Period (e.g. special eligibility formula)	8f. Last Payroll Period Ending Date	8g. Length of payroll period <input type="checkbox"/> Weekly <input type="checkbox"/> Biweekly <input type="checkbox"/> Other (specify length)	
<b>9. Representative who will accept service of all papers for purposes of the representation proceeding</b>			
9a. Full name and title of authorized representative	9b. Signature of authorized representative		9c. Date
9d. Address (Street and number, city, state, and ZIP code)			9e. e-Mail Address
9f. Business Phone No.:		9g. Fax No.	9h. Cell No.

**WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)**

**PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. Section 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation proceedings. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (December 13, 2006). The NLRB will further explain these uses upon request. Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations and may cause the NLRB to refuse to further process a representation case or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

## QUESTIONNAIRE ON COMMERCE INFORMATION

Please read carefully, answer all applicable items, and return to the NLRB Office. If additional space is required, please add a page and identify item number.

CASE NAME	CASE NUMBER 13-RC-295213
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## 1. EXACT LEGAL TITLE OF ENTITY (As filed with State and/or stated in legal documents forming entity)

## 2. TYPE OF ENTITY

☐ CORPORATION ☐ LLC ☐ LLP ☐ PARTNERSHIP ☐ SOLE PROPRIETORSHIP ☐ OTHER (Specify )

## 3. IF A CORPORATION or LLC

A. STATE OF INCORPORATION OR FORMATION	B. NAME, ADDRESS, AND RELATIONSHIP (e.g. parent, subsidiary) OF ALL RELATED ENTITIES
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## 4. IF AN LLC OR ANY TYPE OF PARTNERSHIP, FULL NAME AND ADDRESS OF ALL MEMBERS OR PARTNERS

## 5. IF A SOLE PROPRIETORSHIP, FULL NAME AND ADDRESS OF PROPRIETOR

## 6. BRIEFLY DESCRIBE THE NATURE OF YOUR OPERATIONS (Products handled or manufactured, or nature of services performed).

## 7A. PRINCIPAL LOCATION:

## 7B. BRANCH LOCATIONS:

## 8. NUMBER OF PEOPLE PRESENTLY EMPLOYED

## A. TOTAL:

## B. AT THE ADDRESS INVOLVED IN THIS MATTER:

9. DURING THE MOST RECENT (Check the appropriate box): ☐ CALENDAR ☐ 12 MONTHS or ☐ FISCAL YEAR (FY DATES \_\_\_\_\_)

	YES	NO
A. Did you provide services valued in excess of \$50,000 directly to customers outside your State? If no, indicate actual value. \$ _____		
B. If you answered no to 9A, did you provide services valued in excess of \$50,000 to customers in your State who purchased goods valued in excess of \$50,000 from directly outside your State? If no, indicate the value of any such services you provided. \$ _____		
C. If you answered no to 9A and 9B, did you provide services valued in excess of \$50,000 to public utilities, transit systems, newspapers, health care institutions, broadcasting stations, commercial buildings, educational institutions, or retail concerns? If less than \$50,000, indicate amount. \$ _____		
D. Did you sell goods valued in excess of \$50,000 directly to customers located outside your State? If less than \$50,000, indicate amount. \$ _____		
E. If you answered no to 9D, did you sell goods valued in excess of \$50,000 directly to customers located inside your State who purchased other goods valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount. \$ _____		
F. Did you purchase and receive goods valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount. \$ _____		
G. Did you purchase and receive goods valued in excess of \$50,000 from enterprises who received the goods directly from points outside your State? If less than \$50,000, indicate amount. \$ _____		
H. Gross Revenues from all sales or performance of services (Check the largest amount) <input type="checkbox"/> \$100,000 <input type="checkbox"/> \$250,000 <input type="checkbox"/> \$500,000 <input type="checkbox"/> \$1,000,000 or more If less than \$100,000, indicate amount.		
I. Did you begin operations within the last 12 months? If yes, specify date: _____		

## 10. ARE YOU A MEMBER OF AN ASSOCIATION OR OTHER EMPLOYER GROUP THAT ENGAGES IN COLLECTIVE BARGAINING?

☐ YES ☐ NO (If yes, name and address of association or group).

## 11. REPRESENTATIVE BEST QUALIFIED TO GIVE FURTHER INFORMATION ABOUT YOUR OPERATIONS

NAME	TITLE	E-MAIL ADDRESS	TEL. NUMBER
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## 12. AUTHORIZED REPRESENTATIVE COMPLETING THIS QUESTIONNAIRE

NAME AND TITLE (Type or Print)	SIGNATURE	E-MAIL ADDRESS	DATE
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## PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary. However, failure to supply the information may cause the NLRB to refuse to process any further a representation or unfair labor practice case, or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

## REVIEW THE FOLLOWING IMPORTANT INFORMATION BEFORE FILLING OUT A RESPONSIVE STATEMENT OF POSITION FORM

**Completing and Filing this Form:** For **RC and RD petitions**, the Petitioner is required to complete this form in response to each timely filed and served Statement of Position filed by another party. For **RM petitions**, the Employer-Petitioner must complete a Responsive Statement of Position form and submit the list described below. In accordance with Section 102.63(b) of the Board's Rules, if you are required to complete the form, you must have it signed by an authorized representative, and file a completed copy with any necessary attachments, with this office and serve it on all parties named in the petition responding to the issues raised in another party's Statement of Position, such that it is received no later than noon three business days before the date of the hearing. A separate form must be completed for each timely filed and properly served Statement of Position you receive. If more space is needed for your answers, additional pages may be attached. If you have questions about this form or would like assistance in filling out this form, please contact the Board agent assigned to handle this case. **You must E-File your Responsive Statement of Position at [www.NLRB.gov](http://www.NLRB.gov), but unlike other e-Filed documents, it will *not* be timely if filed on the due date but after noon in the time zone of the Region where the petition was filed. Note that if you are completing this form as a PDF downloaded from [www.NLRB.gov](http://www.NLRB.gov), the form will lock upon signature and no further editing may be made.**

**Required List:** In addition to responding to the issues raised in another party's Statement of Position, if any, the Employer-Petitioner in an RM case is required to file and serve on the parties a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit as of the payroll period preceding the filing of the petition who remain employed at the time of filing. This list must be alphabetized (overall or by department). Unless the employer certifies that it does not possess the capacity to produce the list in the required form, the list must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [www.nlr.gov/sites/default/files/attachments/basic-page/node-4559/Optional Forms for Voter List.docx](http://www.nlr.gov/sites/default/files/attachments/basic-page/node-4559/Optional Forms for Voter List.docx)

**Consequences of Failure to Submit a Responsive Statement of Position:** Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations. Section 102.66(d) provides as follows:

A party shall be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party shall be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross-examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. If the employer fails to timely furnish the lists of employees described in §§102.63(b)(1)(iii), (b)(2)(iii), or (b)(3)(iii), the employer shall be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
**RESPONSIVE STATEMENT OF POSITION – RC, RD or RM PETITION**

**DO NOT WRITE IN THIS SPACE**

Case No.  
13-RC-295213

Date Filed  
May 5, 2022

**INSTRUCTIONS:** If a party has submitted and served on you a timely Statement of Position to an RC, RD or RM petition, the Petitioner must submit this Responsive Statement of Position to an NLRB Office in the Region in which the petition was filed and serve it and any attachments on each party named in the petition in this case such that it is received by noon local time, three business days prior to the hearing date specified in the Notice of Hearing. A separate form must be completed for each timely filed and properly served Statement of Position received by the Petitioner. The Petitioner-Employer in a RM case is required to file this Responsive Statement of Position and include an appropriate employee list without regard to whether another party has filed a Statement of Position.

This Responsive Statement of Position is filed by the Petitioner in response to a Statement of Position received from the following party:

The Employer

An Intervenor/Union

1a. Full Name of Party Filing Responsive Statement of Position

1c. Business Phone

1d. Cell No.

1e. Fax No.

1f. E-Mail Address

1b. Address (Street and Number, City, State, and ZIP Code)

2. Identify all issues raised in the other party's Statement of Position that you dispute and describe the basis of your dispute:

**a. EMPLOYER NAME/IDENTITY** [Box 1a of Statement of Position Form NLRB-505 and Questionnaire on Commerce Information]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

**b. JURISDICTION** [Box 2 of Statement of Position Form NLRB-505 and Questionnaire on Commerce Information]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

**c. APPROPRIATENESS OF UNIT** [Boxes 3, 3a and 3b of Statement of Position Form NLRB-505]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

**d. INDIVIDUAL ELIGIBILITY** [Box 4 of Statement of Position Form NLRB-505]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

**e. BARS TO ELECTION** [Box 5 of Statement of Position Form NLRB-505]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

**f. ALL OTHER ISSUES** [Box 6 of Statement of Position Form NLRB-505]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

**g. ELECTION DETAILS** [Boxes 8a, 8b, 8c, 8d, 8e, 8f, and 8g of Statement of Position Form NLRB-505]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

Full Name and Title of Authorized Representative

Signature of Authorized Representative

Date

**WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001) PRIVACY ACT STATEMENT**  
Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. Section 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation proceedings. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. 74942-43 (December 13, 2006). The NLRB will further explain these uses upon request. Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations and may cause the NLRB to refuse to further process a representation case or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

Please fill all necessary fields on the form PRIOR to digitally signing. To make changes after the form has been signed, right-click on the signature field and click "clear signature." Once complete, please sign the form.





UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

REGION 13  
Dirksen Federal Building  
219 South Dearborn Street, Suite 808  
Chicago, IL 60604-2027

Agency Website: [www.nlr.gov](http://www.nlr.gov)  
Telephone: (312)353-7570  
Fax: (312)886-1341



Download  
NLRB  
Mobile App

**URGENT**

May 5, 2022

IOUE, Local 150, AFL-CIO Legal Department  
6200 Joliet Rd  
Countryside, IL 60525-3992

Re: Sebert Landscaping Company  
Case 13-RC-295213

Dear Sir or Madam:

The enclosed petition that you filed with the National Labor Relations Board (NLRB) has been assigned the above case number. This letter tells you how to contact the Board agent who will be handling this matter; explains your obligation to provide the originals of the showing of interest and the requirement that you complete and serve a Responsive Statement of Position form in response to each timely filed and served Statement(s) of Position; notifies you of a hearing; describes the employer's obligation to post and distribute a Notice of Petition for Election, complete a Statement of Position and provide a voter list; requests that you provide certain information; notifies you of your right to be represented; and discusses some of our procedures including how to submit documents to the NLRB.

**Investigator:** This petition will be investigated by Field Examiner Christopher J. Lee whose telephone number is (312)353-9777 and whose e-mail address is [christopher.lee@nlrb.gov](mailto:christopher.lee@nlrb.gov). The Board agent will contact you shortly to discuss processing the petition. If you have any questions, please do not hesitate to call the Board agent. The Board agent may also contact you and the other party or parties to schedule a conference meeting or telephonic or video conference for some time before the close of business the day following receipt of the final Responsive Statement(s) of Position. This will give the parties sufficient time to determine if any issues can be resolved prior to hearing or if a hearing is necessary. If the agent is not available, you may contact Supervisory Examiner Kate Gianopulos whose telephone number is (312)353-4162. If appropriate, the NLRB attempts to schedule an election either by agreement of the parties or by holding a hearing and then directing an election.

**Showing of Interest:** If the Showing of Interest you provided in support of your petition was submitted electronically or by fax, the original documents which constitute the Showing of Interest containing handwritten signatures must be delivered to the Regional office within **2 business days**. If the originals are not received within that time the Region will dismiss your petition.

**Notice of Hearing:** Enclosed is a Notice of Representation Hearing to be conducted at **9:00 AM on Wednesday, May 25, 2022** via ZOOM Videoconference or at, **219 S Dearborn**



**Street, Suite 808, Chicago, IL 60604**, if the parties do not voluntarily agree to an election. If a hearing is necessary, the hearing will run on consecutive days until concluded unless the regional director concludes that extraordinary circumstances warrant otherwise. Before the hearing begins, we will continue to explore potential areas of agreement with the parties in order to reach an election agreement and to eliminate or limit the costs associated with formal hearings.

Upon request of a party showing good cause, the regional director may postpone the hearing. A party desiring a postponement should make the request to the regional director in writing, set forth in detail the grounds for the request, and include the positions of the other parties regarding the postponement. E-Filing the request is required. A copy of the request must be served simultaneously on all the other parties, and that fact must be noted in the request.

**Posting and Distribution of Notice:** The Employer must post the enclosed Notice of Petition for Election by May 12, 2022 in conspicuous places, including all places where notices to employees are customarily posted. If it customarily communicates electronically with its employees in the petitioned-for unit, it must also distribute the notice electronically to them. The Employer must maintain the posting until the petition is dismissed or withdrawn or this notice is replaced by the Notice of Election. Failure to post or distribute the notice may be grounds for setting aside the election if proper and timely objections are filed.

**Statement of Position:** In accordance with Section 102.63(b) of the Board's Rules, the Employer is required to complete the enclosed Statement of Position form, have it signed by an authorized representative, and file a completed copy with any necessary attachments, with this office and serve it on all parties named in the petition by **noon Central Time on Tuesday, May 17, 2022**. The Statement of Position must include a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit as of the payroll period preceding the filing of the petition who remain employed at the time of filing. If the Employer contends that the proposed unit is inappropriate, it must separately list the full names, work locations, shifts and job classifications of all individuals that it contends must be added to the proposed unit to make it an appropriate unit. The Employer must also indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit.

**Required Responsive Statement of Position (RSOP):** In accordance with Section 102.63(b) of the Board's Rules, following timely filing and service of a Statement of Position, the petitioner is required to complete the enclosed Responsive Statement of Position form addressing issues raised in any Statement(s) of Position. The petitioner must file a complete, signed RSOP in response to all other parties' timely filed and served Statement of Position, with all required attachments, with this office and serve it on all parties named in the petition such that it is received by them by **noon Central Time on Friday, May 20, 2022**. This form solicits information that will facilitate entry into election agreements or streamline the pre-election hearing if the parties are unable to enter into an election agreement. **This form must be e-Filed, but unlike other e-Filed documents, will not be timely if filed on the due date but after noon Central Time.** If you have questions about this form or would like assistance in filling out this form, please contact the Board agent named above.

*Failure to Supply Information:* Failure to supply the information requested by the RSOP form may preclude you from litigating issues under Section 102.66(d) of the Board's Rules and Regulations. Section 102.66(d) provides as follows:

A party shall be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party shall be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross-examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. If the employer fails to timely furnish the lists of employees described in §§ 102.63(b)(1)(iii), (b)(2)(iii), or (b)(3)(iii), the employer shall be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

**Voter List:** If an election is held in this matter, the Employer must transmit to this office and to the other parties to the election, an alphabetized list of the full names and addresses of all eligible voters, including their shifts, job classifications, work locations, and other contact information including available personal email addresses and available personal home and cellular telephone numbers. Usually, the list must be furnished within 2 business days of the issuance of the Decision and Direction of Election or approval of an election agreement. The list must be electronically filed with the Region and served electronically on the other parties. To guard against potential abuse, this list may not be used for purposes other than the representation proceeding, NLRB proceedings arising from it or other related matters.

Under existing NLRB practice, an election is not ordinarily scheduled for a date earlier than 10 days after the date when the Employer must file the voter list with the Regional Office. However, a petitioner and/or union entitled to receive the voter list may waive all or part of the 10-day period by executing Form NLRB-4483, which is available on the NLRB's website or from an NLRB office. A waiver will not be effective unless all parties who are entitled to the voter list agree to waive the same number of days.

**Information Needed Now:** Please submit to this office, as soon as possible, the following information needed to handle this matter:

- (a) The correct name of the Union as stated in its constitution or bylaws.
- (b) A copy of any existing or recently expired collective-bargaining agreements, and any amendments or extensions, or any recognition agreements covering any employees in the petitioned-for unit.
- (c) If potential voters will need notices or ballots translated into a language other than English, the names of those languages and dialects, if any.
- (d) The name and contact information for any other labor organization (union) claiming to represent or have an interest in any of the employees in the petitioned-for unit and for any employer who may be a joint employer of the employees in the proposed unit. Failure to disclose the existence of an interested party may delay the processing of the petition.

**Right to Representation:** You have the right to be represented by an attorney or other representative in any proceeding before the NLRB. In view of our policy of processing these cases expeditiously, if you wish to be represented, you should obtain representation promptly. Your representative must notify us in writing of this fact as soon as possible by completing Form NLRB-4701, Notice of Appearance. This form is available on our website, [www.nlr.gov](http://www.nlr.gov), or from an NLRB office upon your request.

If someone contacts you about representing you in this case, please be assured that no organization or person seeking your business has any “inside knowledge” or favored relationship with the NLRB. Their knowledge regarding this matter was obtained only through access to information that must be made available to any member of the public under the Freedom of Information Act.

**Procedures:** Pursuant to Section 102.5 of the Board’s Rules and Regulations, parties must submit all documentary evidence, including statements of position, exhibits, sworn statements, and/or other evidence, by electronically submitting (E-Filing) them through the Agency’s web site ([www.nlr.gov](http://www.nlr.gov)). You must e-file all documents electronically or provide a written statement explaining why electronic submission is not possible or feasible. Failure to comply with Section 102.5 will result in rejection of your submission. The Region will make its determinations solely based on the documents and evidence properly submitted. All evidence submitted electronically should be in the form in which it is normally used and maintained in the course of business (i.e., native format). Where evidence submitted electronically is not in native format, it should be submitted in a manner that retains the essential functionality of the native format (i.e., in a machine-readable and searchable electronic format). If you have questions about the submission of evidence or expect to deliver a large quantity of electronic records, please promptly contact the Board agent investigating the petition.

Information about the NLRB and our customer service standards is available on our website, [www.nlr.gov](http://www.nlr.gov), or from an NLRB office upon your request. We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

A handwritten signature in black ink, reading "Daniel N. Nelson". The signature is fluid and cursive, with the first name "Daniel" and last name "Nelson" clearly legible.

Daniel N. Nelson  
Acting Regional Director

Enclosures

1. Petition
2. Notice of Petition for Election (Form 5492)
3. Notice of Representation Hearing
4. Description of Procedures in Certification and Decertification Cases (Form 4812)
5. Statement of Position form and Commerce Questionnaire (Form 505)
6. Responsive Statement of Position (Form 506)

cc: Brad H. Russell, Attorney  
Local 150 Legal Department  
6140 Joliet Road  
Countryside, IL 60525  
[brussell@local150.org](mailto:brussell@local150.org)



## National Labor Relations Board



# NOTICE OF PETITION FOR ELECTION

This notice is to inform employees that IOUE, LOCAL 150, AFL-CIO Legal Department has filed a petition with the National Labor Relations Board (NLRB), a Federal agency, in Case 13-RC-295213 seeking an election to become certified as the representative of the employees of Sebert Landscaping Company in the unit set forth below:

**Included:** All regular full and part-time mechanics, mechanic helpers, and parts employees employed at all facilities covered by the Landscape Agreement with Local 150.

**Excluded:** Office and clerical employees, professional employees, sale representatives, guards and supervisors, as defined under the Act.

This notice also provides you with information about your basic rights under the National Labor Relations Act, the processing of the petition, and rules to keep NLRB elections fair and honest.

## YOU HAVE THE RIGHT under Federal Law

- To self-organization
- To form, join, or assist labor organizations
- To bargain collectively through representatives of your own choosing
- To act together for the purposes of collective bargaining or other mutual aid or protection
- To refuse to do any or all of these things unless the union and employer, in a state where such agreements are permitted, enter into a lawful union-security agreement requiring employees to pay periodic dues and initiation fees. Nonmembers who inform the union that they object to the use of their payments for nonrepresentational purposes may be required to pay only their share of the union's costs of representational activities (such as collective bargaining, contract administration, and grievance adjustments).

## PROCESSING THIS PETITION

Elections do not necessarily occur in all cases after a petition is filed. **NO FINAL DECISIONS HAVE BEEN MADE YET** regarding the appropriateness of the proposed unit or whether an election will be held in this matter. If appropriate, the NLRB will first see if the parties will enter into an election agreement that specifies the method, date, time, and location of an election and the unit of employees eligible to vote. If the parties do not enter into an election agreement, usually a hearing is held to receive evidence on the appropriateness of the unit and other issues in dispute. After a hearing, an election may be directed by the NLRB, if appropriate.

**IF AN ELECTION IS HELD**, it will be conducted by the NLRB by secret ballot and Notices of Election will be posted before the election giving complete details for voting.

# ELECTION RULES

The NLRB applies rules that are intended to keep its elections fair and honest and that result in a free choice. If agents of any party act in such a way as to interfere with your right to a free election, the election can be set aside by the NLRB. Where appropriate the NLRB provides other remedies, such as reinstatement for employees fired for exercising their rights, including backpay from the party responsible for their discharge.

The following are examples of conduct that interfere with employees' rights and may result in setting aside the election:

- Threatening loss of jobs or benefits by an employer or a union
- Promising or granting promotions, pay raises, or other benefits, to influence an employee's vote by a party capable of carrying out such promises
- An employer firing employees to discourage or encourage union activity or a union causing them to be fired to encourage union activity
- Making campaign speeches to assembled groups of employees on company time, where attendance is mandatory, within the 24-hour period before the polls for the election first open or, if the election is conducted by mail, from the time and date the ballots are scheduled to be sent out by the Region until the time and date set for their return
- Incitement by either an employer or a union of racial or religious prejudice by inflammatory appeals
- Threatening physical force or violence to employees by a union or an employer to influence their votes

Please be assured that IF AN ELECTION IS HELD, every effort will be made to protect your right to a free choice under the law. Improper conduct will not be permitted. All parties are expected to cooperate fully with the NLRB in maintaining basic principles of a fair election as required by law. The NLRB as an agency of the United States Government does not endorse any choice in the election.

For additional information about the processing of petitions, go to [www.nlr.gov](http://www.nlr.gov) or contact the NLRB at (312)353-7570.

THIS IS AN OFFICIAL GOVERNMENT NOTICE AND MUST NOT BE DEFACED BY ANYONE. IT MUST REMAIN POSTED WITH ALL PAGES SIMULTANEOUSLY VISIBLE UNTIL REPLACED BY THE NOTICE OF ELECTION OR THE PETITION IS DISMISSED OR WITHDRAWN.



## National Labor Relations Board





**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 13**



<b>Sebert Landscaping Company</b> <b>Employer</b>  <b>and</b> <b>IOUE, Local 150, AFL-CIO Legal Department</b> <b>Petitioner</b>	<b>Case 13-RC-295213</b>
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**NOTICE OF REPRESENTATION HEARING**

The Petitioner filed the attached petition pursuant to Section 9(c) of the National Labor Relations Act. It appears that a question affecting commerce exists as to whether the employees in the unit described in the petition wish to be represented by a collective-bargaining representative as defined in Section 9(a) of the Act.

YOU ARE HEREBY NOTIFIED that, pursuant to Sections 3(b) and 9(c) of the Act, at 9:00 AM on **Wednesday, May 25, 2022** and on consecutive days thereafter until concluded via ZOOM Videoconference or at the National Labor Relations Board offices located at, 219 S Dearborn Street, Suite 808, Chicago, IL 60604, a hearing will be conducted before a hearing officer of the National Labor Relations Board. At the hearing, the parties will have the right to appear in person or otherwise, and give testimony.

YOU ARE FURTHER NOTIFIED that, pursuant to Section 102.63(b) of the Board's Rules and Regulations, Sebert Landscaping Company must complete the Statement of Position and file it and all attachments with the Regional Director and serve it on the parties listed on the petition such that is received by them by no later than **noon** Central time on **Tuesday, May 17, 2022**. Following timely filing and service of a Statement of Position by Sebert Landscaping Company, the Petitioner must complete its Responsive Statement of Position(s) responding to the issues raised in the Employer's and/or Union's Statement of Position and file them and all attachments with the Regional Director and serve them on the parties named in the petition such that they are received by them no later than **noon** Central on **Friday, May 20, 2022**.

**Pursuant to Section 102.5 of the Board's Rules and Regulations, all documents filed in cases before the Agency must be filed by electronically submitting (E-Filing) through the Agency's website ([www.nlrb.gov](http://www.nlrb.gov)), unless the party filing the document does not have access to the means for filing electronically or filing electronically would impose an undue burden.** Documents filed by means other than E-Filing must be accompanied by a statement explaining why the filing party does not have access to the means for filing electronically or filing electronically would impose an undue burden. Detailed instructions for using the NLRB's E-Filing system can be found in the [E-Filing System User Guide](#)



The Statement of Position and Responsive Statement of Position must be E-Filed but, unlike other E-Filed documents, must be filed by **noon** Central on the due date in order to be timely. If an election agreement is signed by all parties and returned to the Regional Office before the due date of the Statement of Position, the Statement of Position and Responsive Statement of Position are not required to be filed. If an election agreement is signed by all parties and returned to the Regional office after the due date of the Statement of Position but before the due date of the Responsive Statement of Position, the Responsive Statement of Position is not required to be filed.

Dated: May 5, 2022

/s/ Daniel N Nelson

Daniel N. Nelson  
Acting Regional Director  
National Labor Relations Board  
Region 13  
Dirksen Federal Building  
219 South Dearborn Street, Suite 808  
Chicago, IL 60604-2027

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

<b>Sebert Landscaping Company</b> <b>Employer</b>  <b>and</b> <b>IOUE, LOCAL 150, AFL-CIO Legal Department</b> <b>Petitioner</b>	<b>Case 13-RC-295213</b>
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**AFFIDAVIT OF SERVICE OF: Petition dated May 5, 2022, Notice of Representation Hearing dated May 5, 2022, Description of Procedures in Certification and Decertification Cases (Form NLRB-4812), Notice of Petition for Election, and Statement of Position Form (Form NLRB-505).**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on May 5, 2022, I served the above documents by electronic mail and regular mail upon the following persons, addressed to them at the following addresses:

Jeffrey Sebert, President  
Sebert Landscaping Company  
1550 W Bartlett Road  
Bartlett, IL 60103  
[jeff@sebert.com](mailto:jeff@sebert.com)

IOUE, Local 150, AFL-CIO Legal  
Department  
6200 Joliet Rd  
Countryside, IL 60525-3992

Brad H. Russell, Attorney  
Local 150 Legal Department  
6140 Joliet Road  
Countryside, IL 60525  
[brussell@local150.org](mailto:brussell@local150.org)

May 5, 2022

Date

Brendan Zarling, Designated Agent of NLRB

Name

*/s/ Brendan Zarling*

Signature

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD

**DESCRIPTION OF REPRESENTATION CASE PROCEDURES  
IN CERTIFICATION AND DECERTIFICATION CASES**

The National Labor Relations Act grants employees the right to bargain collectively through representatives of their own choosing and to refrain from such activity. A party may file an RC, RD or RM petition with the National Labor Relations Board (NLRB) to conduct a secret ballot election to determine whether a representative will represent, or continue to represent, a unit of employees. An **RC** petition is generally filed by a union that desires to be certified as the bargaining representative. An **RD** petition is filed by employees who seek to remove the currently recognized union as the bargaining representative. An **RM** petition is filed by an employer who seeks an election because one or more individuals or unions have sought recognition as the bargaining representative, or based on a reasonable belief supported by objective considerations that the currently recognized union has lost its majority status. This form generally describes representation case procedures in RC, RD and RM cases, also referred to as certification and decertification cases.

**Right to be Represented** – Any party to a case with the NLRB has the right to be represented by an attorney or other representative in any proceeding before the NLRB. A party wishing to have a representative appear on its behalf should have the representative complete a Notice of Appearance (Form NLRB-4701), and E-File it at [www.nlr.gov](http://www.nlr.gov) or forward it to the NLRB Regional Office handling the petition as soon as possible.

**Filing and Service of Petition** – A party filing an RC, RD or RM petition is required to serve a copy of its petition on the parties named in the petition along with this form and the Statement of Position form. The petitioner files the petition with the NLRB, together with (1) a certificate showing service of these documents on the other parties named in the petition, and (2) a showing of interest to support the petition. The showing of interest is not served on the other parties.

**Notice of Hearing** – After a petition in a certification or decertification case is filed with the NLRB, the NLRB reviews the petition, certificate of service, and the required showing of interest for sufficiency, assigns the petition a case number, and promptly sends letters to the parties notifying them of the Board agent who will be handling the case. In most cases, the letters include a Notice of Representation Hearing. Except in cases presenting unusually complex issues, this pre-election hearing is set for a date 14 business days (excluding weekends and federal holidays) from the date of service of the notice of hearing. Once the hearing begins, it will continue day to day until completed absent extraordinary circumstances. The Notice of Representation Hearing also sets the due date for filing and serving the Statement(s) of Position and the Responsive Statement of Position(s). Included with the Notice of Representation Hearing are the following: (1) copy of the petition, (2) this form, (3) Statement of Position for non-petitioning parties, (4) petitioner's Responsive Statement of Position, (5) Notice of Petition for Election, and (6) letter advising how to contact the Board agent who will be handling the case and discussing those documents.

**Hearing Postponement:** Requests to postpone the hearing are not routinely granted, but the regional director may postpone the hearing for good cause. A party wishing to request a postponement should make the request in writing and set forth in detail the grounds for the request. The request should include the positions of the other parties regarding the postponement. The request must be filed electronically ("E-Filed") on the Agency's website ([www.nlr.gov](http://www.nlr.gov)) by following the instructions on the website. A copy of the request must be served simultaneously on all the other parties, and that fact must be noted in the request.

**Statement of Position Form and List(s) of Employees** – The Statement of Position form solicits commerce and other information that will facilitate entry into election agreements or streamline the pre-election hearing if the parties are unable to enter into an election agreement. In an **RC** or **RD** case, as part of its Statement of Position form, the employer also provides a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit. If the employer contends that the proposed unit is not appropriate, the employer must separately list the same information for all individuals that the employer contends must be added to the proposed unit to make it an appropriate unit, and must further indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit. These lists must be alphabetized (overall or by department). Unless the employer certifies that it does not possess the capacity to produce the lists in the required form, the lists must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional

form for the list is provided on the NLRB website at [www.nlr.gov/sites/default/files/attachments/basic-page/node-4559/Optional Forms for Voter List.docx](http://www.nlr.gov/sites/default/files/attachments/basic-page/node-4559/Optional Forms for Voter List.docx)

Ordinarily the Statement of Position must be filed with the Regional Office and served on the other parties such that it is received by them by noon 8 business days from the issuance of the Notice of Hearing. The regional director may postpone the due date for filing and serving the Statement of Position for good cause. The Statement of Position form must be E-Filed but, unlike other E-Filed documents, will not be timely if filed on the due date but after noon in the time zone of the Region where the petition is filed. Consequences for failing to satisfy the Statement of Position requirement are discussed on the following page under the heading "Preclusion." A request to postpone the hearing will not automatically be treated as a request for an extension of the Statement of Position due date. If a party wishes to request both a postponement of the hearing and a postponement of the Statement of Position due date, the request must make that clear and must specify the reasons that postponements of both are sought.

**Responsive Statement of Position** – Petitioner's Responsive Statement(s) of Position solicits a response to the Statement(s) of Position filed by the other parties and further facilitates entry into election agreements or streamlines the preelection hearing. A petitioner must file a Responsive Statement of Position in response to each party's Statement of Position addressing each issue in each Statement of Position(s), if desired. In the case of an RM petition, the employer-petitioner must also provide commerce information and file and serve a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit. Ordinarily, the Responsive Statement of Position must be electronically filed with the Regional Office and served on the other parties such that it is received by noon 3 business days prior to the hearing. The regional director may postpone the due date for filing and serving the Responsive Statement of Position for good cause. The Responsive Statement of Position form must be E-Filed but, unlike other E-Filed documents, will not be timely if filed on the due date but after noon in the time zone of the Region where the petition is filed. Consequences for failing to satisfy the Responsive Statement of Position requirement are discussed on the following page under the heading "Preclusion." A request to postpone the hearing will not automatically be treated as a request for an extension of the Responsive Statement of Position due date. If a party wishes to request both a postponement of the hearing and a Postponement of the Responsive Statement of Position due date, the request must make that clear and must specify the reasons that postponements of both are sought.

**Posting and Distribution of Notice of Petition for Election** – Within 5 business days after service of the notice of hearing, the employer must post the Notice of Petition for Election in conspicuous places, including all places where notices to employees are customarily posted, and must also distribute it electronically to the employees in the petitioned-for unit if the employer customarily communicates with these employees electronically. The employer must maintain the posting until the petition is dismissed or withdrawn, or the Notice of Petition for Election is replaced by the Notice of Election. The employer's failure properly to post or distribute the Notice of Petition for Election may be grounds for setting aside the election if proper and timely objections are filed.

**Election Agreements** – Elections can occur either by agreement of the parties or by direction of the regional director or the Board. Three types of agreements are available: (1) a Consent Election Agreement (Form NLRB-651); (2) a Stipulated Election Agreement (Form NLRB-652); and (3) a Full Consent Agreement (Form NLRB-5509). In the Consent Election Agreement and the Stipulated Election Agreement, the parties agree on an appropriate unit and the method, date, time, and place of a secret ballot election that will be conducted by an NLRB agent. In the Consent Agreement, the parties also agree that post-election matters (election objections or determinative challenged ballots) will be resolved with finality by the regional director; whereas in the Stipulated Election Agreement, the parties agree that they may request Board review of the regional director's post-election determinations. A Full Consent Agreement provides that the regional director will make final determinations regarding all pre-election and post-election issues.

**Hearing Cancellation Based on Agreement of the Parties** – The issuance of the Notice of Representation Hearing does not mean that the matter cannot be resolved by agreement of the parties. On the contrary, the NLRB encourages prompt voluntary adjustments and the Board agent assigned to the case will work with the parties to enter into an election agreement, so the parties can avoid the time and expense of participating in a hearing.

**Hearing** – A hearing will be held unless the parties enter into an election agreement approved by the regional director or the petition is dismissed or withdrawn.

**Purpose of Hearing:** The primary purpose of a pre-election hearing is to determine if a question of representation exists. A question of representation exists if a proper petition has been filed concerning a unit

appropriate for the purpose of collective bargaining or, in the case of a decertification petition, concerning a unit in which a labor organization has been certified or is being currently recognized by the employer as the bargaining representative.

**Issues at Hearing:** Issues that might be litigated at the pre-election hearing include: jurisdiction; labor organization status; bars to elections; unit appropriateness; expanding and contracting unit issues; inclusion of professional employees with nonprofessional employees; seasonal operation; potential mixed guard/non-guard unit; and eligibility formulas. At the hearing, the timely filed Statement of Position and Responsive Statement of Position(s) will be received into evidence. The hearing officer will not receive evidence concerning any issue as to which the parties have not taken adverse positions, except for evidence regarding the Board's jurisdiction over the employer and evidence concerning any issue, such as the appropriateness of the proposed unit, as to which the regional director determines that record evidence is necessary.

**Preclusion:** At the hearing, a party will be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or Responsive Statement of Position(s) or to place in dispute in timely response to another party's Statement of Position or response, except that no party will be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. As set forth in §102.66(d) of the Board's rules, if the employer fails to timely furnish the lists of employees, the employer will be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

**Conduct of Hearing:** If held, the hearing is usually open to the public and will be conducted by a hearing officer of the NLRB. Any party has the right to appear at any hearing in person, by counsel, or by other representative, to call, examine, and cross-examine witnesses, and to introduce into the record evidence of the significant facts that support the party's contentions and are relevant to the existence of a question of representation. The hearing officer also has the power to call, examine, and cross-examine witnesses and to introduce into the record documentary and other evidence. Witnesses will be examined orally under oath. The rules of evidence prevailing in courts of law or equity shall not be controlling. Parties appearing at any hearing who have or whose witnesses have disabilities falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.503, and who in order to participate in this hearing need appropriate auxiliary aids, as defined in 29 C.F.R. 100.503, should notify the regional director as soon as possible and request the necessary assistance.

**Official Record:** An official reporter will make the only official transcript of the proceedings and all citations in briefs or arguments must refer to the official record. (Copies of exhibits should be supplied to the hearing officer and other parties at the time the exhibit is offered in evidence.) All statements made at the hearing will be recorded by the official reporter while the hearing is on the record. If a party wishes to make off-the-record remarks, requests to make such remarks should be directed to the hearing officer and not to the official reporter. After the close of the hearing, any request for corrections to the record, either by stipulation or motion, should be forwarded to the regional director.

**Motions and Objections:** All motions must be in writing unless stated orally on the record at the hearing and must briefly state the relief sought and the grounds for the motion. A copy of any motion must be served immediately on the other parties to the proceeding. Motions made during the hearing are filed with the hearing officer. All other motions are filed with the regional director, except that motions made after the transfer of the record to the Board are filed with the Board. If not E-Filed, an original and two copies of written motions shall be filed. Statements of reasons in support of motions or objections should be as concise as possible. Objections shall not be deemed waived by further participation in the hearing. On appropriate request, objections may be permitted to stand to an entire line of questioning. Automatic exceptions will be allowed to all adverse rulings.

**Election Details:** Prior to the close of the hearing the hearing officer will: (1) solicit the parties' positions (but will not permit litigation) on the type, date(s), time(s), and location(s) of the election and the eligibility period; (2) solicit the name, address, email address, facsimile number, and phone number of the employer's on-site representative to whom the regional director should transmit the Notice of Election if an election is directed; (3) inform the parties that the regional director will issue a decision as soon as practicable and will immediately transmit the document to the parties and their designated representatives by email, facsimile, or by overnight mail (if neither an email address nor facsimile number was provided); and (4) inform the parties of their obligations if the director directs an election and of the time for complying with those obligations.

**Oral Argument and Briefs:** Upon request, any party is entitled to a reasonable period at the close of the hearing for oral argument, which will be included in the official transcript of the hearing. At any time before the close of the hearing, any party may file a memorandum addressing relevant issues or points of law. Post-hearing briefs shall be due within 5 business days of the close of the hearing. The hearing officer may allow up to 10 additional business days for such briefs prior to the close of hearing and for good cause. If filed, copies of the memorandum or brief shall be served on all other parties to the proceeding and a statement of such service shall be filed with the memorandum or brief. No reply brief may be filed except upon special leave of the regional director. Briefs including electronic documents, filed with the Regional Director must be formatted as double-spaced in an 8½ by 11 inch format and must be e-filed through the Board's website, [www.nlr.gov](http://www.nlr.gov).

**Regional Director Decision** - After the hearing, the regional director issues a decision directing an election, dismissing the petition or reopening the hearing. A request for review of the regional director's pre-election decision may be filed with the Board at any time after issuance of the decision until 10 business days after a final disposition of the proceeding by the regional director. Accordingly, a party need not file a request for review before the election in order to preserve its right to contest that decision after the election. Instead, a party can wait to see whether the election results have mooted the basis of an appeal. The Board will grant a request for review only where compelling reasons exist therefor.

**Voter List** – The employer must provide to the regional director and the parties named in the election agreement or direction of election a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cellular ("cell") telephone numbers) of all eligible voters. (In construction industry elections, unless the parties stipulate to the contrary, also eligible to vote are all employees in the unit who either (1) were employed a total of 30 working days or more within the 12 months preceding the election eligibility date or (2) had some employment in the 12 months preceding the election eligibility date and were employed 45 working days or more within the 24 months immediately preceding the election eligibility date. However, employees meeting either of those criteria who were terminated for cause or who quit voluntarily prior to the completion of the last job for which they were employed, are not eligible.) The employer must also include in a separate section of the voter list the same information for those individuals whom the parties have agreed should be permitted to vote subject to challenge or those individuals who, according to the direction of election, will be permitted to vote subject to challenge. The list of names must be alphabetized (overall or by department) and be in the same Microsoft Word file (or Microsoft Word compatible file) format as the initial lists provided with the Statement of Position form unless the parties agree to a different format or the employer certifies that it does not possess the capacity to produce the list in the required form. When feasible, the list must be filed electronically with the regional director and served electronically on the other parties named in the agreement or direction. To be timely filed and served, the voter list must be received by the regional director and the parties named in the agreement or direction respectively within 2 business days after the approval of the agreement or issuance of the direction of elections unless a longer time is specified in the agreement or direction. A certificate of service on all parties must be filed with the regional director when the voter list is filed. The employer's failure to file or serve the list within the specified time or in proper format shall be grounds for setting aside the election whenever proper and timely objections are filed. The parties shall not use the list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

**Waiver of Time to Use Voter List** – Under existing NLRB practice, an election is not ordinarily scheduled for a date earlier than 10 calendar days after the date when the employer must file the voter list with the Regional Office. However, the parties entitled to receive the voter list may waive all or part of the 10-day period by executing Form NLRB-4483. A waiver will not be effective unless all parties who are entitled to the list agree to waive the same number of days.

**Election** – Information about the election, requirements to post and distribute the Notice of Election, and possible proceedings after the election is available from the Regional Office and will be provided to the parties when the Notice of Election is sent to the parties.

**Withdrawal or Dismissal** – If it is determined that the NLRB does not have jurisdiction or that other criteria for proceeding to an election are not met, the petitioner is offered an opportunity to withdraw the petition. If the petitioner does not withdraw the petition, the regional director will dismiss the petition and advise the petitioner of the reason for the dismissal and of the right to appeal to the Board.



## **REVIEW THE FOLLOWING IMPORTANT INFORMATION BEFORE FILLING OUT A STATEMENT OF POSITION FORM**

**Completing and Filing this Form:** The Notice of Hearing indicates which parties are responsible for completing the form. If you are required to complete the form, you must have it signed by an authorized representative and file a completed copy (including all attachments) with the RD and serve copies on all parties named in the petition by the date and time established for its submission. If more space is needed for your answers, additional pages may be attached. If you have questions about this form or would like assistance in filling out this form, please contact the Board agent assigned to handle this case. **You must EFile your Statement of Position at [www.nlrb.gov](http://www.nlrb.gov), but unlike other e-Filed documents, it will *not* be timely if filed on the due date but after noon in the time zone of the Region where the petition was filed.**

***Note: Non-employer parties who complete this Statement of Position are NOT required to complete items 8f and 8g of the form, or to provide a commerce questionnaire or the lists described in item 7.***

**Required Lists:** The employer's Statement of Position must include a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit as of the payroll period preceding the filing of the petition who remain employed at the time of filing. If the employer contends that the proposed unit is inappropriate, the employer must separately list the full names, work locations, shifts and job classifications of all individuals that it contends must be added to the proposed unit to make it an appropriate unit. The employer must also indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit. These lists must be alphabetized (overall or by department). Unless the employer certifies that it does not possess the capacity to produce the lists in the required form, the lists must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [www.nlrb.gov/sites/default/files/attachments/basic-page/node-4559/Optional Forms for Voter List.docx](http://www.nlrb.gov/sites/default/files/attachments/basic-page/node-4559/Optional%20Forms%20for%20Voter%20List.docx).

**Consequences of Failure to Supply Information:** Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations. Section 102.66(d) provides as follows:

A party shall be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party shall be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross-examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. If the employer fails to timely furnish the lists of employees described in §§102.63(b)(1)(iii), (b)(2)(iii), or (b)(3)(iii), the employer shall be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
**STATEMENT OF POSITION**

**DO NOT WRITE IN THIS SPACE**

Case No.

13-RC-295213

Date Filed

May 5, 2022

**INSTRUCTIONS:** Submit this Statement of Position to an NLRB Office in the Region in which the petition was filed and serve it and all attachments on each party named in the petition in this case such that it is received by them by the date and time specified in the notice of hearing.

**Note:** Non-employer parties who complete this form are NOT required to complete items 8f or 8g below or to provide a commerce questionnaire or the lists described in item 7.

1a. Full name of party filing Statement of Position		1c. Business Phone:	1e. Fax No.:
1b. Address (Street and number, city, state, and ZIP code)		1d. Cell No.:	1f. e-Mail Address
2. Do you agree that the NLRB has jurisdiction over the Employer in this case? <input type="checkbox"/> Yes <input type="checkbox"/> No (A completed commerce questionnaire (Attachment A) must be submitted by the Employer, regardless of whether jurisdiction is admitted)			
3. Do you agree that the proposed unit is appropriate? <input type="checkbox"/> Yes <input type="checkbox"/> No (If not, answer 3a and 3b )			
a. State the basis for your contention that the proposed unit is not appropriate. (If you contend a classification should be excluded or included briefly explain why, such as shares a community of interest or are supervisors or guards )			
b. State any classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit.			
Added		Excluded	
4. Other than the individuals in classifications listed in 3b, list any individual(s) whose eligibility to vote you intend to contest at the pre-election hearing in this case and the basis for contesting their eligibility.			
5. Is there a bar to conducting an election in this case? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, state the basis for your position.			
6. Describe all other issues you intend to raise at the pre-election hearing.			
7. The employer must provide the following lists which must be alphabetized (overall or by department) in the format specified at <a href="http://www.nlr.gov/sites/default/files/attachments/basic-page/node-4559/Optional%20Forms%20for%20Voter%20List.docx">www.nlr.gov/sites/default/files/attachments/basic-page/node-4559/Optional Forms for Voter List.docx</a> . (a) A list containing the full names, work locations, shifts and job classification of all individuals in the proposed unit as of the payroll period immediately preceding the filing of the petition who remain employed as of the date of the filing of the petition. (Attachment B) (b) If the employer contends that the proposed unit is inappropriate the employer must provide (1) a separate list containing the full names, work locations, shifts and job classifications of all individuals that it contends must be <i>added</i> to the proposed unit, if any to make it an appropriate unit, (Attachment C) and (2) a list containing the full names of any individuals it contends must be <i>excluded</i> from the proposed unit to make it an appropriate unit. (Attachment D)			
8a. State your position with respect to the details of any election that may be conducted in this matter. Type: <input type="checkbox"/> Manual <input type="checkbox"/> Mail <input type="checkbox"/> Mixed Manual/Mail			
8b. Date(s)	8c. Time(s)	8d. Location(s)	
8e. Eligibility Period (e.g. special eligibility formula)	8f. Last Payroll Period Ending Date	8g. Length of payroll period <input type="checkbox"/> Weekly <input type="checkbox"/> Biweekly <input type="checkbox"/> Other (specify length)	
<b>9. Representative who will accept service of all papers for purposes of the representation proceeding</b>			
9a. Full name and title of authorized representative		9b. Signature of authorized representative	9c. Date
9d. Address (Street and number, city, state, and ZIP code)			9e. e-Mail Address
9f. Business Phone No.:		9g. Fax No.	9h. Cell No.

**WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)**

**PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. Section 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation proceedings. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (December 13, 2006). The NLRB will further explain these uses upon request. Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations and may cause the NLRB to refuse to further process a representation case or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

## QUESTIONNAIRE ON COMMERCE INFORMATION

Please read carefully, answer all applicable items, and return to the NLRB Office. If additional space is required, please add a page and identify item number.

CASE NAME	CASE NUMBER 13-RC-295213
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## 1. EXACT LEGAL TITLE OF ENTITY (As filed with State and/or stated in legal documents forming entity)

## 2. TYPE OF ENTITY

☐ CORPORATION ☐ LLC ☐ LLP ☐ PARTNERSHIP ☐ SOLE PROPRIETORSHIP ☐ OTHER (Specify )

## 3. IF A CORPORATION or LLC

A. STATE OF INCORPORATION OR FORMATION	B. NAME, ADDRESS, AND RELATIONSHIP (e.g. parent, subsidiary) OF ALL RELATED ENTITIES
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## 4. IF AN LLC OR ANY TYPE OF PARTNERSHIP, FULL NAME AND ADDRESS OF ALL MEMBERS OR PARTNERS

## 5. IF A SOLE PROPRIETORSHIP, FULL NAME AND ADDRESS OF PROPRIETOR

## 6. BRIEFLY DESCRIBE THE NATURE OF YOUR OPERATIONS (Products handled or manufactured, or nature of services performed).

## 7A. PRINCIPAL LOCATION:

## 7B. BRANCH LOCATIONS:

## 8. NUMBER OF PEOPLE PRESENTLY EMPLOYED

A. TOTAL:

B. AT THE ADDRESS INVOLVED IN THIS MATTER:

9. DURING THE MOST RECENT (Check the appropriate box): ☐ CALENDAR ☐ 12 MONTHS or ☐ FISCAL YEAR (FY DATES \_\_\_\_\_)

	YES	NO
A. Did you provide services valued in excess of \$50,000 directly to customers outside your State? If no, indicate actual value. \$ _____		
B. If you answered no to 9A, did you provide services valued in excess of \$50,000 to customers in your State who purchased goods valued in excess of \$50,000 from directly outside your State? If no, indicate the value of any such services you provided. \$ _____		
C. If you answered no to 9A and 9B, did you provide services valued in excess of \$50,000 to public utilities, transit systems, newspapers, health care institutions, broadcasting stations, commercial buildings, educational institutions, or retail concerns? If less than \$50,000, indicate amount. \$ _____		
D. Did you sell goods valued in excess of \$50,000 directly to customers located outside your State? If less than \$50,000, indicate amount. \$ _____		
E. If you answered no to 9D, did you sell goods valued in excess of \$50,000 directly to customers located inside your State who purchased other goods valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount. \$ _____		
F. Did you purchase and receive goods valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount. \$ _____		
G. Did you purchase and receive goods valued in excess of \$50,000 from enterprises who received the goods directly from points outside your State? If less than \$50,000, indicate amount. \$ _____		
H. Gross Revenues from all sales or performance of services (Check the largest amount) <input type="checkbox"/> \$100,000 <input type="checkbox"/> \$250,000 <input type="checkbox"/> \$500,000 <input type="checkbox"/> \$1,000,000 or more If less than \$100,000, indicate amount.		
I. Did you begin operations within the last 12 months? If yes, specify date: _____		

## 10. ARE YOU A MEMBER OF AN ASSOCIATION OR OTHER EMPLOYER GROUP THAT ENGAGES IN COLLECTIVE BARGAINING?

☐ YES ☐ NO (If yes, name and address of association or group).

## 11. REPRESENTATIVE BEST QUALIFIED TO GIVE FURTHER INFORMATION ABOUT YOUR OPERATIONS

NAME	TITLE	E-MAIL ADDRESS	TEL. NUMBER
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## 12. AUTHORIZED REPRESENTATIVE COMPLETING THIS QUESTIONNAIRE

NAME AND TITLE (Type or Print)	SIGNATURE	E-MAIL ADDRESS	DATE
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## PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary. However, failure to supply the information may cause the NLRB to refuse to process any further a representation or unfair labor practice case, or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

## REVIEW THE FOLLOWING IMPORTANT INFORMATION BEFORE FILLING OUT A RESPONSIVE STATEMENT OF POSITION FORM

**Completing and Filing this Form:** For **RC and RD petitions**, the Petitioner is required to complete this form in response to each timely filed and served Statement of Position filed by another party. For **RM petitions**, the Employer-Petitioner must complete a Responsive Statement of Position form and submit the list described below. In accordance with Section 102.63(b) of the Board's Rules, if you are required to complete the form, you must have it signed by an authorized representative, and file a completed copy with any necessary attachments, with this office and serve it on all parties named in the petition responding to the issues raised in another party's Statement of Position, such that it is received no later than noon three business days before the date of the hearing. A separate form must be completed for each timely filed and properly served Statement of Position you receive. If more space is needed for your answers, additional pages may be attached. If you have questions about this form or would like assistance in filling out this form, please contact the Board agent assigned to handle this case. **You must E-File your Responsive Statement of Position at [www.NLRB.gov](http://www.NLRB.gov), but unlike other e-Filed documents, it will *not* be timely if filed on the due date but after noon in the time zone of the Region where the petition was filed. Note that if you are completing this form as a PDF downloaded from [www.NLRB.gov](http://www.NLRB.gov), the form will lock upon signature and no further editing may be made.**

**Required List:** In addition to responding to the issues raised in another party's Statement of Position, if any, the Employer-Petitioner in an RM case is required to file and serve on the parties a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit as of the payroll period preceding the filing of the petition who remain employed at the time of filing. This list must be alphabetized (overall or by department). Unless the employer certifies that it does not possess the capacity to produce the list in the required form, the list must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [www.nlr.gov/sites/default/files/attachments/basic-page/node-4559/Optional Forms for Voter List.docx](http://www.nlr.gov/sites/default/files/attachments/basic-page/node-4559/Optional%20Forms%20for%20Voter%20List.docx)

**Consequences of Failure to Submit a Responsive Statement of Position:** Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations. Section 102.66(d) provides as follows:

A party shall be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party shall be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross-examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. If the employer fails to timely furnish the lists of employees described in §§102.63(b)(1)(iii), (b)(2)(iii), or (b)(3)(iii), the employer shall be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
**RESPONSIVE STATEMENT OF POSITION – RC, RD or RM PETITION**

**DO NOT WRITE IN THIS SPACE**

Case No.  
13-RC-295213

Date Filed  
May 5, 2022

**INSTRUCTIONS:** If a party has submitted and served on you a timely Statement of Position to an RC, RD or RM petition, the Petitioner must submit this Responsive Statement of Position to an NLRB Office in the Region in which the petition was filed and serve it and any attachments on each party named in the petition in this case such that it is received by noon local time, three business days prior to the hearing date specified in the Notice of Hearing. A separate form must be completed for each timely filed and properly served Statement of Position received by the Petitioner. The Petitioner-Employer in a RM case is required to file this Responsive Statement of Position and include an appropriate employee list without regard to whether another party has filed a Statement of Position.

This Responsive Statement of Position is filed by the Petitioner in response to a Statement of Position received from the following party:

The Employer

An Intervenor/Union

1a. Full Name of Party Filing Responsive Statement of Position

1c. Business Phone

1d. Cell No.

1e. Fax No.

1f. E-Mail Address

1b. Address (Street and Number, City, State, and ZIP Code)

2. Identify all issues raised in the other party's Statement of Position that you dispute and describe the basis of your dispute:

**a. EMPLOYER NAME/IDENTITY** [Box 1a of Statement of Position Form NLRB-505 and Questionnaire on Commerce Information]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

**b. JURISDICTION** [Box 2 of Statement of Position Form NLRB-505 and Questionnaire on Commerce Information]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

**c. APPROPRIATENESS OF UNIT** [Boxes 3, 3a and 3b of Statement of Position Form NLRB-505]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

**d. INDIVIDUAL ELIGIBILITY** [Box 4 of Statement of Position Form NLRB-505]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

**e. BARS TO ELECTION** [Box 5 of Statement of Position Form NLRB-505]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

**f. ALL OTHER ISSUES** [Box 6 of Statement of Position Form NLRB-505]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

**g. ELECTION DETAILS** [Boxes 8a, 8b, 8c, 8d, 8e, 8f, and 8g of Statement of Position Form NLRB-505]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

Full Name and Title of Authorized Representative

Signature of Authorized Representative

Date

**WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001) PRIVACY ACT STATEMENT**  
Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. Section 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation proceedings. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. 74942-43 (December 13, 2006). The NLRB will further explain these uses upon request. Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations and may cause the NLRB to refuse to further process a representation case or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

**Please fill all necessary fields on the form PRIOR to digitally signing. To make changes after the form has been signed, right-click on the signature field and click "clear signature." Once complete, please sign the form.**



UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
**STIPULATED ELECTION AGREEMENT**

**Sebert Landscaping Company**

**Case 13-RC-295213**

The parties **AGREE AS FOLLOWS:**

**1. PROCEDURAL MATTERS.** The parties waive their right to a hearing and agree that any notice of hearing previously issued in this matter is withdrawn, that the petition is amended to conform to this Agreement, and that the record of this case shall include this Agreement and be governed by the Board's Rules and Regulations.

**2. COMMERCE.** The Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the National Labor Relations Act and a question affecting commerce has arisen concerning the representation of employees within the meaning of Section 9(c).

The Employer, Sebert Landscaping Company, is an Illinois corporation and is engaged in the business of providing landscaping services at its 1550 W Bartlett Road, Bartlett, Illinois facility. During the past 12-months, a representative period the Employer has purchased and received goods valued in excess of \$50,000 from points directly outside the State of Illinois.

**3. LABOR ORGANIZATION.** The Petitioner is an organization in which employees participate, and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work and is a labor organization within the meaning of Section 2(5) of the Act.

**4. ELECTION.** A secret-ballot election under the Board's Rules and Regulations shall be held under the supervision of the Regional Director on the date and at the hours and places specified below.

**DATE: Wednesday, June 8, 2022**

**HOURS: 1:00 p.m. - 2:00 p.m.**

**PLACE: The Production Room  
1550 W Bartlett Road  
Bartlett, IL 60103**

If the election is postponed or canceled, the Regional Director, in his or her discretion, may reschedule the date, time, and place of the election.

**5. UNIT AND ELIGIBLE VOTERS.** The following unit is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

Included: All full-time and regular part-time mechanics, mechanic helpers, parts employees and shop helper/drivers within the Employer's Fleet Center Department and employed by the Employer at its 1550 W. Bartlett Road, Bartlett, Illinois and 1050 Lily Cache Ln., Bolingbrook, Illinois locations.

Excluded: All sales representatives, landscape construction field and support employees, landscape maintenance field and support employees, landscape enhancement field and support employees, office clerical employees and guards,

Initials: MH/BR

professional employees, managerial employees and supervisors as defined in the Act.

Those eligible to vote in the election are employees in the above unit who were employed during the **payroll period ending May 21, 2022**, including employees who did not work during that period because they were ill, on vacation, or were temporarily laid off. In a mail ballot election, employees are eligible to vote if they are in the above unit on both the payroll period ending date and on the date they mail in their ballots to the Board's designated office.

Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, employees engaged in an economic strike which commenced less than 12 months before the election date, who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Employees who are otherwise eligible but who are in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause after the designated payroll period for eligibility, and, in a mail ballot election, before they mail in their ballots to the Board's designated office, (2) employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and (3) employees engaged in an economic strike which began more than 12 months before the election date who have been permanently replaced.

**Others permitted to vote:** The parties have agreed that Fleet Supervisors may vote in the election but their ballots will be challenged since their eligibility has not been resolved. No decision has been made regarding whether the individuals in these classifications or groups are included in, or excluded from, the bargaining unit. The eligibility or inclusion of these individuals will be resolved, if necessary, following the election.

**6. VOTER LIST.** Within 2 business days after the Regional Director has approved this Agreement, the Employer must provide to the Regional Director and all of the other parties a voter list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available personal home and cellular telephone numbers) of all eligible voters. The Employer must also include, in a separate section of that list, the same information for those individuals whom the parties have agreed should be permitted to vote subject to challenge. The list must be filed in common, everyday electronic file formats that can be searched. Unless otherwise agreed to by the parties, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. The font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. When feasible, the list must be filed electronically with the Regional Director and served electronically on the parties. The Employer must file with the Regional Director a certificate of service of the list on all parties.

**7. THE BALLOT.** The Regional Director, in his or her discretion, will decide the language(s) to be used on the election ballot. All parties should notify the Region as soon as possible of the need to have the Notice of Election and/or ballots translated.

The question on the ballot will be "Do you wish to be represented for purposes of collective bargaining by the International Union of Operating Engineers, Local 150, AFL-CIO?" The choices on the ballot will be "Yes" or "No".

**8. NOTICE OF ELECTION.** The Regional Director, in his or her discretion, will decide the language(s) to be used on the Notice of Election. The Employer must post copies of the

Initials: MH/BR

Notice of Election in conspicuous places, including all places where notices to employees in the unit are customarily posted, at least three (3) full working days prior to 12:01 a.m. of the day of the election. The Employer must also distribute the Notice of Election electronically, if the Employer customarily communicates with employees in the unit electronically. Failure to post or distribute the Notice of Election as required shall be grounds for setting aside the election whenever proper and timely objections are filed.

**9. NOTICE OF ELECTION ONSITE REPRESENTATIVE.** The following individual will serve as the Employer's designated Notice of Election onsite representative: Dana Ludvigsen, Controller, 630-497-1000, [dana@sebert.com](mailto:dana@sebert.com)

**10. ACCOMMODATIONS REQUIRED.** All parties should notify the Region as soon as possible of any voters, potential voters, or other participants in this election who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.503, and who in order to participate in the election need appropriate auxiliary aids, as defined in 29 C.F.R. 100.503, and request the necessary assistance.

**11. OBSERVERS.** Each party may station an equal number of authorized, nonsupervisory-employee observers at the polling places to assist in the election, to challenge the eligibility of voters, and to verify the tally.

**12. TALLY OF BALLOTS.** Upon conclusion of the election, the ballots will be counted and a tally of ballots prepared and immediately made available to the parties.

**13. POSTELECTION AND RUNOFF PROCEDURES.** All procedures after the ballots are counted shall conform with the Board's Rules and Regulations.

**14. SAFETY PROTOCOLS.** If these protocols cannot be followed (or attested to as required by Memorandum GC 20-10), the Regional Director reserves the right to cancel or reschedule the manual election or convert the election to a mail-ballot election with ballots being mailed out on or as soon as practicable after the scheduled manual election date. Given the COVID-19 pandemic, in order to protect the voters, observers, Board agent(s), and others during the election and ballot count:

- a. The Employer will provide four separate tables with three chairs that will be placed at least 6 feet apart in the voting area: There will be one table for the Employer's Election Observer, one for the Petitioner's Election Observer, one for the Board Agent, and one for the ballots/ballot box/writing utensils. In the event the space of the voting area will not allow for four separate tables; the Employer will set the voting area up to ensure that six feet of space between the voters, the Board Agent, and the Election Observers can be maintained at all times;
- b. Employer will place markings on the ground throughout the voting area, and in the immediate vicinity outside of that area, to ensure proper social distancing for voters and to ensure that the voting line does not exceed 3 voters at a time;
- c. Employer will ensure that the voting area has sufficient room for voters to maintain 6 feet of space between one another when entering and exiting the voting area (the Board Agent(s) will direct the flow of traffic to allow only one voter in the area at a time);
- d. Employer will ensure the voting area has an entrance/exit that can allow for social distancing with markings to depict safe traffic flow throughout the polling area;
- e. Employer will provide hand sanitizers and an abundant number of sanitizing wipes for the voting area;



- f. Employer will provide CDC-conforming masks for all voters;
- g. Employer will provide CDC-conforming masks and gloves for all party representatives and observers;
- h. The Board Agent, voters, and Election Observers shall wear CDC-conforming masks in the voting area during the entirety of the election process. In accordance with the "Voting Place Notice", Form NLRB-5017, the Board Agent has the discretion to advise a voter who is not properly masked in full conformance with CDC guidelines to leave the voting area and return when properly masked.
- i. Employer will provide a sufficient number of disposable pencils without erasers for each voter to mark their ballot.
- j. Employer will provide glue sticks or tape to seal challenged ballot envelopes.
- k. Employer will provide plexiglass barriers of sufficient size to protect the observers and Board Agent(s), and to separate observers and the Board Agent(s) from voters and each other, pre-election conference and ballot count attendees.
- l. The Board Agent has the discretion to limit attendance at the counting of the ballots to the number of people who can maintain 6 feet of space between one another.
- m. All individuals attending the pre-election conference and ballot count shall wear CDC-conforming masks. The Board agent has the discretion to advise a conference or count attendee who is not properly masked in full conformance with CDC guidelines to leave the conference/count and return when properly masked.
- n. An inspection of the polling areas will occur by Zoom videoconference with all parties at **2:00 p.m. on June 7, 2022**, so that the Board agent and parties can view the polling area.
- o. Employer will post signs immediately adjacent to the Notice of Election to notify voters, observers, party representatives, and other participants of the mask requirement.
- p. Employer will sanitize the polling area the day of the election, prior to the start of the pre-election conference.
- q. Parties will immediately notify the Regional Director in writing if any participant in the election, including all representatives, observers, and eligible voters, test positive for COVID-19 or if they have been directly exposed to individuals who have tested positive for COVID-19 **during the 14 days immediately preceding the election date.**
- r. **The Employer will complete and submit GC 20-10 COVID-19 Certification Forms A and B to the Region within the time frame set forth on the forms. The Forms will be considered by the Regional Director in determining whether conducting the election manually will jeopardize public health. Failure to provide accurate or timely forms may result in the election being cancelled, rescheduled, or converted to a mail ballot election;**
- s. **The Petitioner will complete and submit GC 20-10 COVID-19 Certification Form B to the Board Agent conducting the election within the time frame set forth on the form.**

- t. **Individuals for which Form B was not submitted will not be permitted to be physically present at the pre-election conference, to serve as an observer during the election or at the ballot count.**
- u. All parties agree to immediately notify the Regional Director, if, **within 14 days after the day of the election**, any individuals who were present in the facility on the day of the election:
- have tested positive for COVID-19 (or has been directed by a medical professional to proceed as if they have tested positive for COVID-19, despite not being tested) within the prior 14 days;
  - are awaiting results of a COVID-19 test;
  - are exhibiting symptoms of COVID-19, including a fever of 100.4 or higher, cough, shortness of breath;
  - have had direct contact with anyone in the previous 14 days who has tested positive for COVID-19 (or who are awaiting test results for COVID-19 or have been directed by a medical professional to proceed as if they have tested positive for COVID-19, despite not being tested).

**Sebert Landscaping Company**

(Employer)

**By:** /s/ Michael F. Hughes 5/24/2022  
(Signature) (Date)

**Print Name:** Michael F. Hughes, Attorney for  
Employer

**International Union of Operating Engineers,  
Local 150, AFL-CIO**

(Petitioner)

**By:** /s/ Brad Russell 5/24/2022  
(Signature) (Date)

**Print Name:** Brad Russell, Associate General  
Counsel

(Union)

**By:** \_\_\_\_\_  
(Signature) (Date)

**Print Name:** \_\_\_\_\_

**Recommended:** /s/ Christopher J. Lee 5/24/2022  
Christopher J. Lee, Field Examiner (Date)

**Date approved:** 5/24/2022

/s/ Timothy Watson (/s/ acting ARD KMG 5/24/2022)  
**Acting Regional Director, Region 13**  
**National Labor Relations Board**

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD

Sebert Landscaping Company

Employer

and

International Union of Operating Engineers,  
Local 150, AFL-CIO

Petitioner

Case No. 13-RC-295213

Date Filed May 5, 2022

Date Issued June 8, 2022

City Bartlett

State IL

(If applicable check  
either or both:)Type of Election:  
(Check one:)

- ☒ Stipulation  
☐ Board Direction  
☐ Consent Agreement  
☐ RD Direction Incumbent Union (Code)

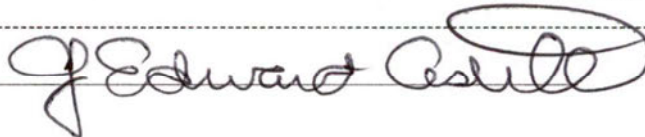
- ☐ 8(b) (7)  
☐ Mail Ballot

## TALLY OF BALLOTS

The undersigned agent of the Regional Director certifies that the results of tabulation of ballots case in the election held in the above case, and concluded on the date indicated above, were as follows:

- |   |            |    |
|---|------------|----|
| 1. Approximate number of eligible voters  | 10         |    |
| 2. Number of Void ballots   | 0          |    |
| 3. Number of Votes cast for   | PETITIONER | 5  |
| 4. Number of Votes cast for   |            |    |
| 5. Number of Votes cast for   |            |    |
| 6. Number of Votes cast against participating labor organization(s)   |            | 3  |
| 7. Number of Valid votes counted (sum 3, 4, 5, and 6)   |            | 8  |
| 8. Number of challenged ballots   |            | 2  |
| 9. Number of Valid votes counted plus challenged ballots (sum of 7 and 8)                                     |            | 10 |
| 10. Challenges are <del>(not)</del> sufficient in number to affect the results of the election.               |            |    |
| 11. <del>A majority of the valid votes counted plus challenged ballots (Item 9) has (not) been cast for</del> | PETITIONER |    |

For the Regional Director



The undersigned acted as authorized observers in the counting and tabulating of ballots indicated above. We hereby certify that the counting and tabulating were fairly and accurately done, that the secrecy of the ballots was maintained, and that the results were as indicated above. We also acknowledge service of this tally.

For PETITIONER



For EMPLOYER



For

**UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
REGION 13**

International Union of Operating Engineers,	)	
Local 150, AFL-CIO,	)	
	)	
Petitioner,	)	
and	)	Case No.: 13-RC-295213
	)	
Sebert Landscaping Company,	)	
	)	
Employer.	)	


**EMPLOYER’S OBJECTION TO THE ELECTION**

Employer, Sebert Landscaping Company (“Sebert” or the “Company”), by and through its attorneys, and pursuant to 29 CFR § 102.69(a), hereby files its objection to the election conducted on June 8, 2022, by Region 13 at Sebert’s facilities in Bartlett, Illinois. Sebert’s objection is as follows:

**Objection**

- 1. The Fleet Supervisor, a “supervisor” as that term is defined by Section 2(11) of the Act, engaged in pro-union conduct on behalf of the Petitioner which tended to coerce or interfere with the employees’ free choice in the election, and which materially affected the outcome of the election.**

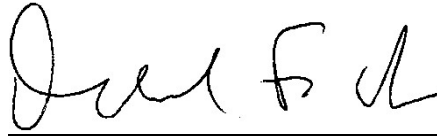
(b) (6), (b) (7)(C)



## Conclusion

Based on the foregoing Objection, Sebert respectfully requests that the results of the election conducted on June 8, 2022 be set aside, and that the Region rerun the election once laboratory conditions have been reestablished. Pursuant to 29 CFR 102.69(a), Sebert is submitting its Offer of Proof to the Region simultaneously herewith.

Respectfully Submitted,

By: 

Michael F. Hughes  
One of the Attorneys for  
Sebert Landscaping Company

Jeffrey A. Risch  
Michael F. Hughes  
SmithAmundsen LLC  
3815 E. Main Street, Suite A-1  
St. Charles, IL 60174  
(630) 587-7910 – Telephone  
(630) 587-7960 – Facsimile  
jrisch@smithamundsen.com  
mhughes@smithamundsen.com  
**ATTORNEYS FOR EMPLOYER**

## **CERTIFICATE OF SERVICE**

I, Michael F. Hughes, Attorney for the Employer, affirm, certify or on oath state, that I served the forgoing **EMPLOYER'S OBJECTIONS TO THE ELECTION** in Case 13-RC-295213 upon the following by the method(s) indicated below this 15<sup>th</sup> day of June, 2022, as follows:

Region 13  
National Labor Relations Board  
Dirksen Federal Building  
219 S. Dearborn St., Suite 808  
Chicago, Illinois 60604-2027  
***Via E-Filing***

Christopher Lee, Field Examiner  
Region 13  
National Labor Relations Board  
219 South Dearborn St., Ste. 808  
Chicago, Illinois 60604  
Email: Christopher.Lee@nrlrb.gov  
***Via Electronic Mail***

To Petitioner:  
Brad H. Russell  
Associate General Counsel  
International Union of Operating Engineers  
Local 150, AFL-CIO  
6140 Joliet Road  
Countryside, IL 60525  
Email: brussell@local150.org  
***Via Electronic Mail***

**SEBERT LANDSCAPING COMPANY**

By: /s/ Michael F. Hughes  
One of its Attorneys

Jeffrey A. Risch  
Michael F. Hughes  
SmithAmundsen LLC  
3815 E. Main Street, Suite A-1  
St. Charles, IL 60174  
(630) 587-7910 – Telephone  
(630) 587-7960 – Facsimile  
jrisch@smithamundsen.com  
mhughes@smithamundsen.com  
**ATTORNEYS FOR EMPLOYER**

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 13**

**SEBERT LANDSCAPING COMPANY**

**Employer**

**And**

**Case 13-RC-295213**

**INTERNATIONAL UNION OF  
OPERATING ENGINEERS, LOCAL  
150, AFL-CIO**

**Union**

**ORDER DIRECTING HEARING AND NOTICE OF HEARING  
ON CHALLENGED BALLOTS AND OBJECTIONS**

Based on a petition filed on May 5, 2022, and pursuant to a Stipulated Election Agreement, an election was conducted on June 8, 2022, to determine whether a unit of employees of Sebert Landscaping Company (the Employer) wish to be represented for purposes of collective bargaining by the International Union of Operating Engineers, Local 150, AFL-CIO (the Union). That voting unit consists of:

Included: All full-time and regular part-time mechanics, mechanic helpers, parts employees and shop helper/drivers within the Employer's Fleet Center Department, employed by the Employer at its 1550 W. Bartlett Road, Bartlett, Illinois and 1050 Lily Cache Ln., Bolingbrook, Illinois locations.

Excluded: All sales representatives, landscape construction field and support employees, landscape enhancement field and support employees, office clerical employees and guards, professional employees, managerial employees and supervisors as defined in the Act.

The tally of ballots prepared at the conclusion of the election shows that of the approximately 10 eligible voters, 5 votes were cast for and 3 votes were cast against the Union, with 2 challenged ballots, a number that is sufficient to affect the results of the election.

**THE CHALLENGED BALLOTS**

The name of the challenged voter, the stated reason for each challenge, and the party or person who made the challenge are as follows:

<b>Name of Challenged Voter</b>	<b>Reason for Challenge</b>	<b>Challenged By</b>
Zachary Pierce	Related to management/seasonal employee	Union



<b>Name of Challenged Voter</b>	<b>Reason for Challenge</b>	<b>Challenged By</b>
Marcos Quinones	Supervisor	Employer

With regard to the challenged ballots, the Union takes the position that the ballot of Zachary Pierce should not be counted because he is a seasonal employee who was hired post-petition and is the son of General President/Vice President Steve Pierce. The Employer takes the position that the ballot of Zachary Pierce should be counted as he is a shop helper and shares an overwhelming community of interest with the petitioned-for employees.

With regard to the challenged ballot of Marcos Quinones, the Employer takes the position that his ballot should not be counted as he is a statutory supervisor and manages the Fleet Center of approximately nine (9) employees. The Union takes the position that the ballot of Marcos Quinones should be counted as his duties are that of a mechanic and has none of the supervisory authority or indicia under Section 2(11) of the Act.

### **THE OBJECTION**

On June 15, 2022, the Employer filed a timely objection to conduct affecting the results of the election, stating that Fleet Supervisor Marcos Quinones had tainted the Union's showing of interest as well as the petition itself. The Union maintains that Marcos Quinones is not a supervisor.

### **CONCLUSION AND ORDER**

I have concluded that the challenged ballots raise substantial and material issues of fact that can best be resolved by hearing. I have also concluded that the evidence described in the offer of proof submitted by the Employer in support of its objection could be grounds for overturning the election if introduced at a hearing. Accordingly, in accordance with Section 102.69(c)(1)(ii) of the Board's Rules and Regulations, IT IS ORDERED that a hearing shall be held before a Hearing Officer designated by me, for the purpose of receiving evidence to resolve the issues raised with respect to the challenges and objections. At the hearing, the parties will have the right to appear in person to give testimony, and to examine and cross-examine witnesses.

Upon the conclusion of the hearing, the Hearing Officer shall submit to me and serve on the parties a report containing resolutions of the credibility of witnesses, findings of fact and recommendations as to the disposition of the challenges and objections.

### **NOTICE OF HEARING**

PLEASE TAKE NOTICE THAT on **July 25, 2022, at 10:00 a.m.**, a hearing on challenges and objections as described above will be conducted before a hearing officer of the National Labor Relations Board via Zoom teleconference. The hearing will continue on consecutive days thereafter until completed unless I determine that extraordinary circumstances warrant otherwise.

Dated: July 8, 2022

/s/ Angie Cowan Hamada

Angie Cowan Hamada  
Regional Director  
National Labor Relations Board  
Region 13  
Dirksen Federal Building  
219 South Dearborn Street, Suite 808  
Chicago, IL 60604-2027

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 13**

**SEBERT LANDSCAPING COMPANY**

**Employer**

**And**

**Case 13-RC-295213**

**INTERNATIONAL UNION OF  
OPERATING ENGINEERS, LOCAL  
150, AFL-CIO**

**Union**

**AFFIDAVIT OF SERVICE OF: ORDER DIRECTING HEARING AND NOTICE OF  
HEARING ON CHALLENGED BALLOTS AND OBJECTIONS**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on July 8, 2022, I served the above documents by electronic mail and regular mail upon the following persons, addressed to them at the following addresses:

Michael Hughes  
SmithAmundsen LLC  
3815 East Main Street  
Suite A-1  
Saint Charles, IL 60174  
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Jeffrey Sebert  
Sebert Landscaping Company  
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International Union of Operating Engineers,  
Local 150, AFL-CIO  
6200 Joliet Road  
Countryside, IL 60525-3992

Brad Russell  
Local 150 Legal Department  
6140 Joliet Road  
Countryside, IL 60525  
[brussell@local150.org](mailto:brussell@local150.org)

July 8, 2022

Date

Brendan Zarling, Designated Agent of  
NLRB

Name

*/s/ Brendan Zarling*

Signature

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 13**

**SEBERT LANDSCAPING COMPANY**

**Employer**

**and**

**Case 13-RC-295213**

**INTERNATIONAL UNION OF OPERATING  
ENGINEERS, LOCAL 150, AFL-CIO**

**Petitioner**

**ORDER RESCHEDULING HEARING**

**IT IS HEREBY ORDERED** that the hearing in the above-entitled matter is rescheduled from July 25, 2022 at 10:00 AM to 10:00 AM on **Thursday, August 4, 2022** at 209 S. Dearborn St., Suite 808, Chicago, IL 60604 or via Zoom Videoconference. The hearing will continue on consecutive days until concluded.

Dated this 21<sup>st</sup> day of July, 2022.

**/s/Angie C. Hamada**

Angie Cowan Hamada  
REGIONAL DIRECTOR  
NATIONAL LABOR RELATIONS BOARD  
REGION 13  
Dirksen Federal Building  
219 South Dearborn Street, Suite 808  
Chicago, IL 60604-2027

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 13**

**SEBERT LANDSCAPING COMPANY**

**Employer**

**and**

**Case 13-RC-295213**

**INTERNATIONAL UNION OF OPERATING  
ENGINEERS, LOCAL 150, AFL-CIO**

**Petitioner**

**AFFIDAVIT OF SERVICE OF: Order Rescheduling Hearing, dated July 21, 2022.**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on July 21, 2022, I served the above-entitled document(s) by **electronic mail** upon the following persons, addressed to them at the following addresses:

Jeffrey Sebert, President  
Sebert Landscaping Company  
1550 W Bartlett Road  
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International Union of Operating Engineers,  
Local 150, AFL-CIO  
6200 Joliet Road  
Countryside, IL 60525-3992

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Saint Charles, IL 60174  
[mhughes@smithamundsen.com](mailto:mhughes@smithamundsen.com)

July 21, 2022

Timothy D. Bennett, Designated Agent of  
NLRB

---

Date

---

Name

/s/Timothy D. Bennett

Signature

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 13**

**SEBERT LANDSCAPING COMPANY**

**Employer**

**and**

**Case 13-RC-295213**

**INTERNATIONAL UNION OF OPERATING  
ENGINEERS, LOCAL 150, AFL-CIO**

**Petitioner**

**SUPPLEMENTAL ORDER  
LIMITING THE HEARING TO THE EMPLOYER'S OBJECTION  
AND FURTHER LIMITING EVIDENCE TO SUPERVISORY STATUS**

On July 8, 2022, I issued an Order Directing Hearing and Notice of Hearing on Challenged Ballots and Objections<sup>1</sup> ("Order") in the instant case pursuant to Section 102.69(c) of the Rules and Regulations of the National Labor Relations Board ("Board"). The Order instructed a hearing officer of the Board to take evidence and issue a report resolving questions of credibility and containing findings of fact and recommendations as to the disposition of two determinative challenged ballots<sup>2</sup> and the Employer's timely-filed objection.

On July 21, 2022, I issued an Order Rescheduling Hearing that rescheduled the hearing in this matter from July 25, 2022, to August 4, 2022. The hearing began on August 4 and is continuing for consecutive days. Thus far, only evidence regarding supervisory status has been entered into the record.

**The Challenged Ballots**

At the hearing, the parties entered into a stipulation on the record regarding the eligibility of one of the two challenged ballots,<sup>3</sup> leaving only one challenged ballot which is a number insufficient to affect the outcome of the election.

---

<sup>1</sup> Although entitled a Notice of Hearing on Challenged Ballots and Objections, the Employer filed only a single objection.

<sup>2</sup> The tally of ballots for the election conducted on June 8, 2022, shows that of the approximately 10 eligible voters, 5 votes were cast in favor of representation by Petitioner, 3 votes were cast against representation, and 2 ballots were challenged, a number that is sufficient to affect the results of the election. Petitioner challenged the ballot of (b) (6), (b) (7)(C) on the basis (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) while the Employer challenged the ballot of (b) (6), (b) (7)(C) on the basis (b) (6) is a supervisor under Section 2(11) of the National Labor Relations Act ("Act").

<sup>3</sup> The parties stipulated that (b) (6), (b) (7)(C) is not eligible to vote. I approve the stipulation of the parties.

## The Objection

On June 15, 2022, the Employer timely filed an objection to conduct affecting the results of the election, specifically:

**The Fleet Supervisor, a “supervisor” as that term is defined by Section 2(11) of the Act, engaged in pro-union conduct on behalf of the Petitioner which tended to coerce or interfere with the employees’ free choice in the election, and which materially affected the outcome of the election.**

The Employer’s Objection and offer of proof in support of the Objection<sup>4</sup> indicate the Employer will question employees about their communications and activities with (b) (6), (b) (7)(C) in support of the petition and/or will question (b) (6), (b) (7)(C) about (b) (6), (b) (7)(C) communications and activities with employees in support of the petition. However, if (b) (6), (b) (7)(C) is an employee and not a supervisor, such questioning likely violates Section 8(a)(1) of the Act as it seeks information about employees’ confidential and protected organizing activities.<sup>5</sup>

Thus, as an initial matter, I have instructed the hearing officer to take evidence limited to only the supervisory status of Marcos Quinones.

If the evidence at hearing is insufficient to show that (b) (6), (b) (7)(C) is a statutory supervisor, then (b) (6), (b) (7)(C) could not have tainted Petitioner’s showing of interest of the petition as alleged in the Objection, and I will issue a Certification of Representative. If the evidence indicates (b) (6), (b) (7)(C) is a supervisor, the Objection will be remanded to a hearing officer to receive evidence regarding the conduct described in the Employer’s Objection.

## Conclusion and Order<sup>6</sup>

I have concluded that the evidence described in the offer of proof submitted by the Employer in support of its objection could be grounds for overturning the election if introduced at a hearing. I have also concluded that bifurcation of the issues regarding the Employer’s Objection is necessary to avoid a potential violation of Section 8(a)(1) of the Act. Accordingly, in accordance with Section 102.69(c) of the Board’s Rules and Regulations, IT IS ORDERED that the hearing before the hearing officer designated by me, which began on August 4, 2022, and continuing for consecutive days thereafter, is limited to the purpose of receiving evidence to resolve the supervisory status of Marcos Quinones. The parties have the right to appear in person to give testimony, to examine and cross-examine witnesses, and to introduce into the record

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<sup>4</sup> The Objection and offer of proof also allege conduct by (b) (6), (b) (7)(C) that tainted Petitioner’s showing of interest in support of the petition in this case.

<sup>5</sup> See, for example, *Guess?, Inc.*, 339 NLRB 432 (2003); see also *Rossmore House*, 269 NLRB 1176 (1984), affd. sub nom. *Hotel & Restaurant Employees, Local 11 v. NLRB*, 760 F.2d 1006 (9th Cir. 1985).

<sup>6</sup> Pursuant to Sec. 102.67(c) of the Board’s Rules and Regulations, a request for review may be filed with the Board at any at any time until 10 business days after a final disposition of the proceeding by the Regional Director.



evidence of the significant facts that support their contentions and are relevant to the supervisory status of Marcos Quinones.

Upon the conclusion of the hearing, the hearing officer shall submit to me and serve on the parties a report containing resolutions of the credibility of witnesses, findings of fact, and recommendations as to whether Marco Quinones is a statutory supervisor.

Dated: August 5, 2022

/s/ **Angie Cowan Hamada**

Angie Cowan Hamada, Regional Director  
National Labor Relations Board, Region 13  
Dirksen Federal Building  
219 South Dearborn Street, Suite 808  
Chicago, Illinois 60604-2027

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 13**

**SEBERT LANDSCAPING COMPANY**

**Employer**

**and**

**Case 13-RC-295213**

**INTERNATIONAL UNION OF OPERATING  
ENGINEERS, LOCAL 150, AFL-CIO**

**Petitioner**

**ORDER GRANTING EXTENSION OF TIME FOR FILING OF POST-HEARING  
BRIEFS**

By electronic request on September 12, 2022, Employer's Counsel requested an extension of time, from September 12, 2022 at 5:00 p.m. to September 14, 2022 at 5:00 p.m., to file and serve the briefs for the post-election hearing held in the above matter. Petitioner's Counsel did not object to the request. Having duly considered the Employer's request and the reasons advanced therefore,

**IT IS HEREBY ORDERED** that the time for filing and service of post-hearing briefs is extended from September 12, 2022 5:00 p.m. until September 14, 2022 at 5:00 p.m. No further extensions will be granted.

Dated: September 13, 2022

---

Angie Cowan Hamada  
REGIONAL DIRECTOR  
NATIONAL LABOR RELATIONS BOARD  
REGION 13  
Dirksen Federal Building  
219 South Dearborn Street, Suite 808  
Chicago, IL 60604-2027

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 13**

**SEBERT LANDSCAPING COMPANY**

**Employer**

**and**

**Case 13-RC-295213**

**INTERNATIONAL UNION OF OPERATING  
ENGINEERS, LOCAL 150, AFL-CIO**

**Petitioner**

**AFFIDAVIT OF SERVICE OF: Order Granting Extension of Time for Filing of Post-Hearing Briefs, dated September 13, 2022.**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on September 13, 2022, I served the above-entitled document(s) by **electronic mail** upon the following persons, addressed to them at the following addresses:

Jeffrey Sebert , President  
Sebert Landscaping Company  
1550 W Bartlett Road  
Bartlett, IL 60103

Jeffrey A. Risch , Attorney  
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Local 150 Legal Department  
6140 Joliet Road  
Countryside, IL 60525

International Union of Operating Engineers,  
Local 150, AFL-CIO  
6200 Joliet Road  
Countryside, IL 60525-3992

---

**Enter NAME**, Designated Agent of NLRB

---

Date

---

Name

---

Signature

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 13**

SEBERT LANDSCAPING COMPANY,	)	
	)	
Respondent,	)	
	)	
and	)	Case No. 13-RC-295213
	)	
INTERNATIONAL UNION OF OPERATING	)	
ENGINEERS, LOCAL 150, AFL-CIO,	)	
	)	
Petitioner.	)	

**LOCAL 150's POST-HEARING BRIEF**

Brad H. Russell (*brussell@local150.org*)  
Local 150 Legal Department  
6140 Joliet Road  
Countryside, IL 60525  
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## **TABLE OF CONTENTS**

TABLE OF CONTENTS.....	ii
TABLE OF AUTHORITIES .....	iv
I. STATEMENT OF THE CASE.....	1
II. FACTS .....	2
A. Sebert Landscaping.....	2
B. The Fleet Center and its Employees .....	3
1. Dan Bitler.....	4
2. Katie Bryant.....	4
3. Marcos Quinones .....	4
4. Octavio Martin-Perez.....	7
5. Mariano Flores.....	7
6. Jose Romo.....	7
7. Luis Abril.....	7
8. Samuel Avila Escobar.....	7
9. Sabas Valladares .....	8
10. Rafael Torres.....	8
11. Rogelio Vega .....	8
C. Notice to Other Employees That Marcos Quinones was Fleet Supervisor.....	8
D. Work and Overtime Schedules of Fleet Center Employees.....	10
E. Time Off Requests .....	13
F. Late Arrival or Early Quit.....	13
G. Typical Day for Fleet Center Employees.....	14
1. Priority of Repairs.....	14
2. Assignment of Other Tasks.....	15
a. Cleaning the Shop.....	16
3. Emails from Bitler.....	17
4. Preventative Maintenance (“PM”) Work.....	18
H. Ordering Parts for Repairs .....	20
I. Reviews/Evaluations of Fleet Center Employees .....	22
J. Wage Increases .....	23
K. Fleet Center Budget .....	23

L. Employee Belief as to Who is Their Supervisor.....	24
III. ARGUMENT.....	24
A. The Hearing Officer Should Find that Quinones is Not a Statutory Supervisor .....	24
B. Hiring, Transfers, Suspension/Discipline, Layoffs/Recall, Promotions, Rewards (including Evaluations, and Wage Increases), and Adjusting Grievances. ....	27
C. Time off Requests and Late Arrivals/Early Quits.....	28
D. Work Schedules and Overtime Assignments.....	29
E. Assignment and Responsible Direction.....	32
1. Quinones Does Not Direct the Employees During a Typical Day of Work .....	33
a. Bitler determined the priority of work. ....	34
b. Quinones did not exercise independent judgment. ....	34
c. Quinones was not held accountable for any alleged direction.....	37
F. Secondary Indicia.....	42
1. Employees Consider Bitler Their Supervisor and Did Not Know Quinones was the Fleet Supervisor .....	43
2. Quinones Did Not Attend Management Meetings, Wore the Same Uniform as the Other Mechanics, and Was Not Salaried .....	46
IV. CONCLUSION.....	47

## **TABLE OF AUTHORITIES**

### **Cases**

<i>Austal USA, L.L.C.</i> , 349 NLRB 561 (2007).....	26
<i>Avante at Wilson, Inc.</i> , 348 NLRB 1056 (2006).....	26
<i>Benjamin H. Realty Corp.</i> , 361 NLRB No. 103 (2014).....	26
<i>Brusco Tug &amp; Barge Co.</i> , 359 NLRB 486 (2013).....	35
<i>Children’s Farm Home</i> , 324 NLRB 61 (1997).....	32
<i>Chrome Deposit Corp.</i> , 323 NLRB 961 (1997).....	42
<i>CNN America, Inc.</i> , 361 NLRB No. 47 (2014).....	31, 34, 41
<i>Cook Inlet Tug &amp; Barge, Inc.</i> , 362 NLRB No. 111 (2015) .....	35
<i>Croft Metals, Inc.</i> , 348 NLRB 717 (2006).....	26, 31
<i>Dean &amp; Deluca New York, Inc.</i> , 338 NLRB 1046 (2003) .....	26
<i>Dole Fresh Vegetables</i> , 339 NLRB 785 (2003).....	25
<i>Elmhurst Extended Care Facilities</i> , 329 NLRB 535 (1999).....	26
<i>G4S Regulated Security Solutions</i> , 362 NLRB No. 134 (2015) .....	26
<i>Golden Crest Healthcare Center</i> , 348 NLRB 727 (2006).....	26, 33, 37
<i>K.G. Knitting Mills</i> , 320 NLRB 374 (1995) .....	42
<i>KGW-TV</i> , 329 NLRB 378 (1999) .....	32, 34, 41
<i>Lynwood Manor</i> , 350 NLRB 489 (2007).....	26, 33
<i>Modesto Radiology Imaging, Inc.</i> , 361 NLRB No. 84 (2014).....	31
<i>Network Dynamics Cabling</i> , 351 NLRB 1423 (2007).....	26
<i>NLRB v. Health Care &amp; Retirement Corp. of America</i> , 511 U.S. 571 (1994).....	25
<i>NLRB v. Kentucky River Community Care, Inc.</i> , 532 U.S. 706 (2001) .....	25, 27
<i>Oakwood Healthcare, Inc.</i> , 348 NLRB 686 (2006).....	26, 32, 33, 35, 37
<i>Pacific Coast M.S. Industries</i> , 355 NLRB 1422 (2010) .....	26
<i>Peacock Productions of NBC Universal Media, LLC</i> , 364 NLRB No. 104 (2016). .....	35, 37
<i>Pearl/Tech Security Network</i> , 308 NLRB 655 (1992).....	25
<i>Phelps Community Medical Center</i> , 295 NLRB 486 (1989).....	26
<i>S.D.I. Operating Partners, L.P.</i> , 321 NLRB 111 (1996).....	34
<i>Shaw, Inc.</i> , 350 NLRB 354 (2007) .....	31
<i>Springfield Terrace LTD</i> , 355 NLRB 937 (2010) .....	31
<i>St. Francis Medical Center-West</i> , 323 NLRB 1046 (1997).....	33
<i>Training School at Vineland</i> , 332 NLRB 1412 (2000).....	42
<i>UpshurRural Electric</i> , 254 NLRB 709 (1981) .....	34
<i>Veolia Transportation Services</i> , 363 NLRB No. 188 (2016) .....	26, 32, 34, 41
<i>Volair Contractors, Inc.</i> , 341 NLRB 673 (2004).....	26, 34



## **I. STATEMENT OF THE CASE**

On May 4, 2022, the International Union of Operating Engineers, Local 150 AFL-CIO (“Local 150” or the “Union”) filed an RC Petition on behalf of various shop mechanics and shop helpers of Sebert Landscaping (“Sebert”). Ultimately, the parties executed a Stipulated Election Agreement (“Election Stipulation”) for:

All full-time and regular part-time mechanics, mechanic helpers, parts employees and shop helper/drivers within the Employer’s Fleet Center Department and employed by the Employer at its 1550 W. Bartlett Road, Bartlett, Illinois and 1050 Lily Cache Ln., Bolingbrook, Illinois locations.

Excluded were:

All sales representatives, landscape construction field and support employees, landscape maintenance field and support employees, landscape enhancement field and support employees, office clerical employees and guards, professional employees, managerial employees and supervisors as defined in the Act.

The Election Stipulation also permitted others to vote, stating: “The parties have agreed that Fleet Supervisors may vote in the election, but their ballots will be challenged since their eligibility has not been resolved. No decision has been made regarding whether the individuals in these classifications or groups are included in, or excluded from, the bargaining unit. The eligibility or inclusion of these individuals will be resolved, if necessary, following the election.”

All employees in Sebert’s voter list voted in the election. Pursuant to the Election Stipulation, the Board challenged the vote of Marcos Quinones who the Employer had identified as the classification of “Fleet Supervisor” in the voter list. Local 150 properly challenged the vote of Zachary Pearce due to him being a relative of management<sup>1</sup>, a college student, and a temporary/seasonal employee. The final tally of votes was 5 in favor of the union and 3 opposed with the 2 challenged votes. Sebert also filed its Objection to the Election with the Region alleging

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<sup>1</sup> It is unclear at this stage whether Steven Pearce is also an owner of the Employer.

various unlawful conduct of Marcos Quinones, the alleged supervisor. Since Sebert timely filed its objection and the challenged votes were outcome determinative, the Region set these matters for hearing beginning on August 8, 2022. During the hearing, Sebert agreed to exclude Zachary Pearce's vote from the election. The Region also bifurcated the remaining issues of 1. Whether Marcos Quinones is a statutory supervisor and 2. Whether Marcos Quinones engaged in objectionable conduct such that it tainted the election. The only issue litigated during this hearing was the first regarding the supervisory status of Marcos Quinones.

The hearing closed on August 10, 2022, and Local 150 files this brief in support of its position that Marcos Quinones is not a statutory supervisor because he did not exercise any of the 12 supervisory indicia required to make him a bona fide supervisor as fully discussed below.

## **II. FACTS**

### **A. Sebert Landscaping**

Sebert Landscaping ("Sebert") is a landscape maintenance and construction company with seven branches in northeastern Illinois and southeastern Wisconsin (20-22).<sup>2</sup> The owner and President of Sebert is Jeff Sebert (33-34, 864). Steve Pearce is the Vice President of Operations (24-25). Sebert maintains a fleet of over 200 vehicles and numerous pieces of landscape equipment used in its business (*id.*, 21-22). Sebert's equipment includes handheld tools, lawn trimmers, hedge trimmers, lawnmowers, skid steers, and snow removal equipment (22). It has many landscape crews and construction crews that each consist of 3-4 people and a crew supervisor (25, 37-38). Sebert also has several branch managers (37). Its Fleet Center and primary shop is in Bartlett, Illinois (52-53).

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<sup>2</sup> Citations to the transcript of the proceedings only include the page number and will be denoted as "(#)."

## **B. The Fleet Center and its Employees**

The Fleet Center is in Bartlett, Illinois where the primary work of repairing and maintaining vehicles and equipment happens (24). The Fleet Center employees consist of a Fleet Manager, Fleet Administrator, Fleet Supervisor, truck/trailer mechanics, small engine mechanics, a delivery driver, and a shop helper (24-25, 27, 142-146). The Fleet Manager is “in charge of the repair shop, but also maintaining the entire fleet, which involves purchasing new vehicles, selling off old equipment and vehicles, taxes, licensing, and then, of course, running the repair shop as well and the maintenance on all of the equipment and vehicles” (20). The fleet supervisor is supposed to handle the day-to-day activities in the shop (24). The mechanics are to repair and maintain all pieces of equipment and machinery of Sebert (27). Truck/Trailer mechanics are generally in charge of repairing the trucks, trailers, and heavy equipment (skid steers) and the small engine mechanics are generally responsible for repairing all manners of small equipment, including grass cutting machinery and equipment (147, 813-814).

At all relevant times, there has only been one delivery driver in the Fleet Center (132, 160-161, 221, 598). The delivery driver’s responsibility is to pick up and deliver equipment to and from the branches and jobsite (27, 132) as well as to pick up parts as needed by the mechanics (168-169, 310). The driver is the only person generally authorized to pick up parts when needed (168-169, 590, 860, 863). The driver has a pre-determined route set up for him that is the same route each week (40, 219, 539-540).

There is also a shop helper who primarily helps the fleet administrator with clerical duties collecting information from the mechanics on what repairs are done, what needs to be done and getting that information to the fleet administrator (1-27, 153). The skills and experience of the Fleet Center employees are well known in the shop (148) and some employees have stronger skills with certain types of equipment (216).

## **1. Dan Bitler**

Dan Bitler (“Bitler”) started working for Sebert in 2016 as the Fleet Supervisor (131). When hired, he received a salary of \$70,000 plus incentives (131, 243). He worked out of an office within the Bartlett shop where he had a computer and desk (329). As Fleet Supervisor, Bitler never wrenched or repaired any kind of machinery and did not wear the same uniforms as the other Fleet Center employees (159-160, 266-267). He would also attend management meetings every Wednesday (885).

Around October 2019, Bitler was promoted to Fleet Manager when the previous Fleet Manager, Ralph Meyers, left (32, 913). After being promoted to Fleet Manager, Bitler remained at his desk in the shop until a new office, still within in the shop, was built about a year and a half later (365).

As Fleet Manager, Bitler reports to Steve Pearce and is in charge of running the Fleet Center and ensuring the maintenance/repair of all the equipment and vehicles (20-22, 24-25). In addition to the employees at the Bartlett Fleet Center, there are mechanics in Wisconsin who report directly to Bitler (150).

## **2. Katie Bryant**

Katie Bryant (“Bryant”) joined the Fleet Center as Fleet Administrator in October 2019 (154, 1063). She joined the Fleet Center to help Bitler because the new Fleet Supervisor (Marcos Quinones) was not going to fill the same role as Bitler did as Fleet Supervisor (1075). Zachary Pearce, son of Steve Pearce, was a temporary shop helper who primarily helped Bryant with administration work.

## **3. Marcos Quinones**

Marcos Quinones (“Quinones”) worked for Sebert for 22 years up until June 2022 (159, 848). Up until his separation from the Company, Quinones had never once been disciplined or

reprimanded (203). In 2000, Quinones started as a mechanic who grew to primarily work on trucks and trailers within a short amount of time (394). He became to be known as a great mechanic with strong abilities, and very knowledgeable of all of Sebert's equipment and machinery (32). He was the Fleet Center's most experienced employee (159). About five years after he was hired, he also began teaching other mechanics at Sebert, something he did during the rest of his employment (850). Quinones speaks primarily Spanish, but over the course of his 22 years working in the Fleet Center, his English regarding the machines, parts, and other shop talk increased (908, 929, 960). During the last six years, Quinones worked repairing machines, ordering parts, or training new mechanics in the shop just like he had for years before that (307, 863-864). Quinones worked primarily with Samuel and Romo on trucks and trailers (842).

Around August or September of 2019, at the same time Bitler became Fleet Manager, Quinones had a meeting with Jeff Sebert, Bitler, Al Tokar, and a secretary named Dana Ludvigsen, in Jeff Sebert's conference room (864-865, 916-917). During that meeting, Jeff Sebert told Quinones that he was giving Quinones the Fleet Supervisor position and that he was going to automatically get a \$2/hour raise (866). Jeff Sebert also said he wanted Quinones to be the head mechanic and to continue working as he did before as a mechanic wrench (866-867, 917). Quinones asked Jeff Sebert for a truck, and Jeff Sebert said he would fix that within three months, but Quinones never received one (867). Additionally, Quinones only got \$1/hour raise, not \$2 as promised, because Bitler later said he was already making a lot of money (867-868). This later created some tension between Quinones and Bitler (867-868, 923-924, 963-964).

Most importantly, in that meeting where Jeff Sebert offered Quinones the position of Fleet Supervisor, nobody told Quinones what his role would entail or what would be expected of him (869-870, 885). Likewise, nobody told him what authority he would have as Fleet Supervisor, but

Jeff Sebert said that Quinones would be part of the weekly management/supervisor meetings, but that never happened for Quinones, not even once (869-870, 885). After this meeting, Quinones continued to do his job just as he did before (870-871) and nobody ever explained to him what authority, if any, he had or what his responsibilities were as Fleet Supervisor (870-871; 916).

Quinones ultimately received the title of Fleet Supervisor, but nothing really changed for him, and he continued to do the same job he did before, which was repairing equipment and ordering parts (870-873). From his perspective, everything remained the same except for his new title (*id.*). Quinones wore the same uniform as the other mechanics just as he did before, he did not get the supervisor uniform that Bitler had worn, and there was nothing on his uniform designating him as a supervisor (261). Quinones received no office, no desk, no computer, or chair like Bitler enjoyed as Fleet Supervisor (348). Quinones maintained his same work area with his toolbox, which was no different than before and no different than any of the other mechanics (348-349, 366). Also, Quinones did not become a salaried employee or receive the same pay as Bitler, as Steve Pearce felt it was unnecessary to make Quinones a salaried employee (244). So, Quinones remained an hourly employee (*id.*).

Admittedly, Bitler did not give Quinones the same responsibilities he had when he was Fleet Supervisor stating that, “it was modified from what I was doing it” (209). Bitler started Quinones in the Fleet Supervisor role “kind of small and let them, you know, grow. The idea was for him to grow into the supervisor position” (209, 233). As a result, Bitler took the fleet supervisor responsibilities with him when he became the Fleet Manager (209, 1075) and Quinones continued doing his job as a mechanic just like he did before (870-871).

Sebert gave Quinones an incentive package in 2020 and 2021 (Er. Exs. 2, 3, 4). Quinones never understood these incentives because Bitler never really explained it to him (923, 928-929).

Also, Bitler gave him the incentives in English (926-927) and Quinones can only read a little bit in English and when he got the incentive documents he could not read and understand them (927).

#### **4. Octavio Martin-Perez**

Octavio Martin-Perez (“Octavio”) has been a small engine mechanic at Sebert for the last 8 years (145, 616). Octavio was assigned to small engines by Ralph Meyers and has had that assignment since (617).

#### **5. Mariano Flores**

Mariano Flores (“Mariano”) has most recently worked at Sebert for the last five years (804-807). He started as a landscape maintenance employee, and beginning in 2018 or 2019, he began working in the Fleet Center during the winter performing winter maintenance work on the fleet equipment (*id.*). In October 2021, Flores was hired by Bitler as a small engine mechanic in the Fleet Center (145, 804-808, 810-811, 841).

#### **6. Jose Romo**

Jose Romo (“Romo”) has been a truck/trailer mechanic at Sebert for the last 8.5 years (682). His main responsibilities include working on suspension, brakes, engines, and electrical problems on trucks (682). Romo is the Fleet Center’s “truck go to guy” (1071).

#### **7. Luis Abril**

Luis Abril (“Abril”) has been a mechanic for Sebert for the last 5 years (260, 391). Abril is the only mechanic at Sebert’s Bolingbrook, Illinois shop (*id.*) and fixes all types of equipment (392-393).

#### **8. Samuel Avila Escobar**

Samuel Avila Escobar (“Samuel”) has been a truck/trailer mechanic for Sebert for about a year and a half and was hired by Bitler (145, 754).

## **9. Sabas Valladares**

Sabas Valladares (“Sabas”) was a mechanic for Sebert at the time of the union election (145).

## **10. Rafael Torres**

Rafael Torres (“Torres”) started at Sebert three years ago as a delivery driver (304) who delivered equipment and picked up parts (305). Torres worked as a delivery driver up until April 2022 (590, 539).

## **11. Rogelio Vega**

Rogelio Vega (“Rogelio”) has been a driver in the Fleet Center since April 2022 (590, 539). His job has been to bring in damaged equipment, deliver fixed equipment and pick up parts for machines (539).

### **C. Notice to Other Employees That Marcos Quinones was Fleet Supervisor**

When Quinones received the title of Fleet Supervisor, the other Fleet Center employees were not aware of this.<sup>3</sup> Quinones, Octavio, and Romo, who were all mechanics at the time Quinones received the title of Fleet Supervisor, state that there was never an announcement that Quinones was the Fleet Supervisor (911).

Octavio did not find out Quinones was the Fleet Supervisor “until now, when this whole things about the union started” (642). When Ralph left, Bitler and Steve Pearce told him Bitler was going to be the new Fleet Manager and they would find another supervisor, but they never told him there was a new supervisor after that (623-624, 642, 645). Octavio thought Bitler was doing both roles up to now (646). Romo didn’t know Quinones was the Fleet Supervisor until the

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<sup>3</sup> Abril claims there was a meeting (395-396) at the Bartlett shop where all other mechanics, including Marcos, Victor, Romo, Octavio (498), were there and Bitler announced that Quinones was the new supervisor (395-396), but all of those named employees state there was no such meeting and they did not become aware of Quinones as Fleet Supervisor until the union campaign (642, 689, 911).



whole thing about the union started (689). Nobody ever told him, and he did not attend any meeting where it was announced (689).

Likewise, Samuel didn't know Quinones was Fleet Supervisor "until the union stuff started" and it was the Union Business Agent who told him after he asked why the vote results were taking so long (757, 772). Nobody ever told Samuel to report to Quinones (773). To the contrary, when Bitler interviewed Samuel (while Quinones was Fleet Supervisor), Bitler told him that Bitler was the shop manager, and never told him that Quinones was the Fleet Supervisor (756). Bitler told Samuel he would be working on trucks, and that Bitler was going to move him to another shop area so he could learn the procedures there (754-755). He was later moved around the shop by Dan as stated (755). Additionally, during the interview, Bitler told him he would be working 10 hours/day and going to be on rotation for Saturday overtime hours (755). Quinones' name never came up in the interview with Bitler (756).

Similarly, nobody ever told Mariano that Quinones was the Fleet Supervisor (813, 821). When Bitler interviewed Mariano (while Quinones was Fleet Supervisor), Bitler never mentioned Quinones' name and never told him Quinones was his supervisor, but rather told Mariano that he would work 10 hours per day and that he was the new small engine mechanic (810-813). Mariano did not know Quinones was the Fleet Supervisor until "Just now. This process going on currently" (813).

Torres stated that Biter did tell him, but Bitler did not tell him what Quinones' responsibilities were and didn't tell him he had to do what Quinones said to do (331, 335).

Vega stated that when he started, he was told along with "all of the other coworkers" that Quinones was the shop supervisor (541) but later contradicted this statement on cross exam and said it was just a conversation between him and Biter where "they told me to check with Marcos,

because he was going to tell me where to start working” (590). Thus, Bitler never told Vega that Quinones was his supervisor.

Although Bitler says Quinones’ role as Fleet Supervisor was different than the role Bitler played as Fleet Supervisor, Bitler did not relay this to employees (351).

#### **D. Work and Overtime Schedules of Fleet Center Employees**

The Fleet Center employees work primarily in two seasons – summer and winter (62). In the summer season, the primary focus is just maintaining the fleet and handling the repairs as they come up (1-68). The employees will perform preventative maintenance (discussed below), but the focus is really getting repairs of the equipment made (*id.*). During the summer, they work in two shifts (58), where half start at 6:00 a.m. and the other half at 8:00 a.m. (58-60). This was so the Fleet Center was open for 12 hours daily to make sure the morning crews get their repairs taken care of, and when the crews come back at the end of the day, their repairs are taken care of as well (*id.*).

In the winter season, everyone works same schedule doing seasonal changeover of the equipment (61). During this time, the Fleet Center employees get ready for the spring by servicing all of the equipment (63-64). They do all kinds of repairs for snow blowers, shovels, trucks and fix all of the summertime equipment (661). The employees, including Quinones, work in teams during the winter (661) performing repairs on equipment (662-663). Bitler brings helpers to the shop and lets the more senior employees choose who is on their team (662). Quinones would help make the list of parts needed for winter service, give the list to Bitler, Bitler would verify the quantities were correct, and then Bitler would place the order (66).

On a regular basis, all Fleet Center employees would attend a staff meeting where the employees would find out their schedules including overtime assignments (629, 691-692, 768-769, 818). Bitler calls and leads these staff meetings each month, where they all talk about work

and come up with work schedules, including overtime, for everyone (507, 626, 692-693, 818, 832-833). Bitler has been calling these same meetings since he started as Fleet Supervisor, and he is the one making the scheduling decisions (886-890). At these meetings, Bitler makes decisions regarding the hours that the employees are going to work, the changes from winter to summer, overtime hours, etc. (628-629, 692-693, 818, 833, 886-890). Quinones' role during these meetings, including his time as Fleet Supervisor, was simply translating for the other employees (368, 417, 629, 693, 890 - 891). When the employees leave this meeting, they know their schedule and what overtime hours they will be working (629, 692, 818, 832-833). Bitler admitted this has been the same process since he started (182) and the other employees testified that is how it is still done now (181, 183, 226, 507, 626, 886-890).

There are two types of overtime the employees work, Saturday overtime and daily overtime, which are both determined during the staff meetings with Bitler as well (255, 627, 692-693, 818). Saturday overtime occurs in the springtime each year because the landscaping crews are just starting to go out so if those crews are working Saturdays, the Fleet Center needs to as well to support the crews. "So, we've always had guys here on Saturdays for five to six hours to cover any needs that the crews might need on Saturdays for repairs" (256).

Bitler stated that typically when there is daily overtime, everyone is working overtime (79), except on Saturdays where they ask a volunteer to work overtime on a Saturday (79, 351, 559). Saturday overtime has also been done by rotation and by the group of mechanics deciding together in the staff meetings (788-789, 834).

Overtime assignments are discussed at the scheduling meetings (183, 227, 627, 692-693). Bitler said that overtime was planned ahead in the meetings (255) and then he would tell the employees, “We’re going to be working 50 hour weeks” (255).<sup>4</sup>

Bitler stated, “there wasn’t really a lot where we needed spontaneous overtime” (254-255), but if there was, such assignments would come from Bitler (351, 638, 735, 836). In those rare instances Bitler would make a quick meeting asking who wants to work the following day on Saturday (796-797). Vega stated that if overtime was needed beyond his pre-determined schedule, “Dan would inform Marcos of those changes to me and in turn Marcos would relay the message over to us or we would find that information out in our meetings” (557-558). Quinones never required an employee to work overtime on his own volition or made recommendations to Bitler about overtime assignments (978).

Similarly, Quinones never called these meetings and never required any employee to stay late or recommended to Bitler that an employee should stay late (797, (978-979). Bitler stated overtime was assigned by the Fleet Supervisor (1-79), but the evidence shows, and employees consistently testified that Bitler sets the overtime schedule in the staff meetings and Quinones plays no role in determining it (891-892). During his interview, Bitler told Samuel he would be working 10 hours/day and going to be rotation for Saturday overtime and mentioned nothing of Quinones (755). In fact, Samuel has never had a conversation with Quinones about overtime (797). Torres says that overtime was scheduled during the staff meetings (367-368) where Bitler did the talking with Quinones doing the translating (*id.*). Likewise, Octavio testified that overtime is determined

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<sup>4</sup> If Saturdays needed, it would be brought up in the meeting and ask for volunteers (255), but Bitler says that there were times when Quinones would assign guys to work Saturdays as well (255) but no evidence was introduced that this actually happened. In his next breath, Bitler contradicts himself and says it was all on Quinones’ schedule and Bitler had no input (256), but then Bitler states “I try not to let them work more than 55 hours” (256). Nevertheless, the evidence is clear that overtime is discussed and assigned at the staff meetings by Bitler.

at the staff meetings (627). Quinones testified that he did not have authority to alter the schedules of anyone in the shop and did not make recommendations regarding schedules, although he unsuccessfully tried once (977).

#### **E. Time Off Requests**

All time off requests are approved or denied (denials never occurred) by Bitler (185, 321, 337, 607, 553-554, 457, 592, 593, 624-625). Employees would obtain a time off request form from Bitler or Bryant, fill it out, and Bitler would approve and sign it (81). Quinones never had any authority to approve time off requests as only Bitler did (892-893). Bitler stated that he would verify with Quinones if “he is ok with it,” but vacation was never denied to anyone (81). Bitler describes the process as Quinones coming to Bitler and stating, “Octavio wants to take this time off” and Bitler stated he would print off the form and give the final approval (81). However, Octavio stated he never went to Quinones for permission, he would always go straight to Bitler, a process that never changed since Bitler started with the company (624-625).

During Samuel’s interview (while Quinones was fleet supervisor), Samuel asked Bitler about how to request time off, Bitler said that if he needed to take a day off or take vacation, he needed to talk to Bitler directly and didn’t tell him anything about seeking Quinones’ permission (756). In fact, as stated above, Quinones’ name never came up during the interview (756). As a result, Samuel has taken his time off by talking direct to Bitler and Quinones has played no part in that (769). Likewise, several other employees testified they all go straight to Bitler for time off requests (457, 607, 592, 593, 624-625, 689-691, 813, 819).

#### **F. Late Arrival or Early Quit**

Quinones, as Fleet Supervisor, did not have authority to allow employees to either leave early or arrive later and never recommended to Bitler that an employee could do so (979). When Bitler was Fleet Supervisor, employees would call him and the same has happened since he became

Fleet Manager (189). Other employees state they either do not let anyone know or they just tell Bitler without asking for permission (633, 698).<sup>5</sup>

## **G. Typical Day for Fleet Center Employees**

Typically, the mechanics come in at their scheduled start time and deal with the morning rush. This morning rush consists of the maintenance and/or landscape crews and supervisors waiting at the shop in the morning to have some equipment or machines fixed before they go out in the field (618-620, 683, 757-758, 814-815). These are the first repairs the mechanics must perform each day as Bitler has told them in the staff meetings that they should take care of the groups that are there in the mornings first and then move on to other repairs (*id.*, 636, 677). It is those other crew supervisors who are telling the mechanics what to do (*id.*). The same is true for Abril in Bolingbrook where he says the maintenance supervisors in Bolingbrook were in charge of managing the workload for him and they set the priority for his repairs (512-513, 523-524). After the morning rush, the mechanics begin to repair all the machinery in the shop that needs repair (619, 684-685, 759, 817).

### **1. Priority of Repairs**

The priority of the repairs is determined by Bitler or Bryant (878, 1069). Bitler stated that the equipment being heavily used in the season gets priority (35). Other people not in the Fleet Center tell them they need it right away such as other branch managers, other crew supervisors, account managers (37, 251). These people contact the Fleet Manager and/or the Fleet Supervisor and/or the Fleet Administrator (38). If a priority conflict arises, it escalates to Bitler where he

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<sup>5</sup> Torres says he gets permission for this from Quinones (322) and would text or call “them” (unclear who “them” includes) at 6:00am even though Quinones does not start until 8:00am (341). However, Torres stated he was only late one or two times in his 3 years of employment, so this is really a rare occurrence (341). Likewise, during his 3 years, he only needed to leave early about 4 times (341). Also, when Vega was asked if Quinones had to check with Bitler about these instances, he said “I don’t know” (606). Romo stated that when he leaves early, he talks to Bitler, and Bitler has never told him he has to talk to Quinones (698). If Bitler not around, Romo would tell Quinones, not ask for permission, that he was leaving early so Quinones would tell Bitler (698-699).

gives his input on what should be done first (71). If Bitler receives a call for a priority repair, he determines if the priority is legitimate or not and if he thought it was, he would tell Quinones that it needed to get done (218; 251; 1012-1013; 1044-1046) and Bitler would expect that it takes top priority (1044).

Priority repairs come from other crews, other supervisors, and other branch managers as well. Mariano stated that he knows the priority of the work from Octavio who gets it from those other people and never gets the list of priorities from Quinones (817-818, 827). The same is true for Romo who says priority is from the other supervisors from the other groups (684-685, 724-725) and not from Quinones<sup>6</sup> (726).

Octavio stated that if there is an emergency and he or another mechanic gets an urgent call for a repair while Bitler is out of the office, they tell them to call Bitler because he is the one that needs to make the determination (678). In these occasions, Octavio would either tell Bitler or Bryant, never Quinones, about those conversations so they can decide if they need to get that piece of equipment in the shop (678).

## **2. Assignment of Other Tasks**

Bitler stated that reassigning mechanic from one piece of equipment to another does not happen except monthly, not a daily, or weekly type of thing (45) and stated that Marcos “might have had to do that” (46) but he does not know because he was not there (*id.*). Quinones stated he

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<sup>6</sup> Once again, Torres’ testimony regarding the priority of jobs cannot be trusted. Torres testified that he would ask Quinones 2-3x per week what the priority was to work on (376). Outside of that, Torres would on his own just “pick any equipment to fix. There is a lot to fix” (376-377) and continue doing that until Quinones would tell him otherwise (378). However, Torres’ testimony regarding the frequency was inconsistent saying this happened 2-3x daily, a couple days a week, not at all and he just keeps working on small equipment or would just ask him how the job is going (376-378). This testimony is very inconsistent and cannot be trusted. The most logical explanation and what is supported by the evidence is that it appears Quinones would instruct him when there was a priority piece of equipment, but outside of that, Torres would pick equipment on his own and work on it. Those priority projects would come from Bitler, or other supervisors or branch managers as discussed.

would only give an employee a task, i.e., pull him off a task and assign another, if Bitler had told him to and he never did this on his own volition because he “did not have the authority to do it” (882).

Other employees corroborate this statement from Quinones as well. Octavio stated that if Quinones is ever telling him what to do, Quinones is the messenger there with Bitler (621). Romo and Samuel both corroborate this as their experience also (732-734, 758, 776) and states that it is either Bitler or the other crew supervisors who tell him what to do (684-685). Romo also testified he has never observed Quinones giving direction to other mechanics on what they should be working on, but it is Bitler who gives the orders (731-732).

Samuel knows what to do because Bitler tells them in the monthly meetings what to focus on (759). Samuel says it was Bitler that would change his assignment from one place in the shop to another (776). If Quinones was involved, then it was Quinones telling him that “Dan was the person who told him to let me know what I needed to do” (758, 776).

#### **a. Cleaning the Shop**

The only times the mechanics clean the shop are yearly and daily cleanings (326). Each mechanic is responsible for cleaning their own area (659-660). When Bitler was Fleet Supervisor, he would determine when to shut the shop down and clean, a responsibility he admittedly kept and continued to do during his time as Fleet Manager (53; 113). When Quinones was Fleet Supervisor, Quinones stated he knew when it was time to clean the shop because Bitler would tell him it was time to clean so they all would clean the shop (883).<sup>7</sup> In those instances, they would all work together to clean the shop (883-884).

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<sup>7</sup> Torres states that it is Quinones that gives the instruction on a bigger scale once a year (325) where all mechanics clean the shop from one end to the other (326). However, Torres was only a mechanic for 2 months while Quinones was fleet supervisor, so there really was not much time for him to form any knowledge or opinion on this and he stated it was only the mechanics that would clean, and he was a delivery driver for most of his employment (342).



Octavio, Romo, Samuel, and Mariano all corroborate Quinones' testimony that they know when it is time to clean because Bitler comes in and tells them they all have to clean with Quinones acting as the translator and that this happens once or twice a year (631, 697, 769, 818-819). Octavio who has been at Sebert for 8 years, testified that since Bitler has been there, this is how it has been done (631). Romo testified that Quinones has never told him to clean (697).

### **3. Emails from Bitler**

Bitler will occasionally receive emails from other branches or supervisors requesting priority or urgent repairs on trucks or large equipment, rarely on small equipment (166-167, 798, 1047; Er. Ex. 8 at p. 2). This does not happen frequently, maybe once a month (1047). When it was regarding a truck, Bitler would expect a truck mechanic to perform those repairs (1042-1043).<sup>8</sup> Bitler would either give a copy of those emails to Quinones, Romo, or Octavio and rarely would put them on Quinones' toolbox (622, 793-794, 932-934). Most of the time Bitler would give those emails to Romo (934) as Romo was their "truck go to guy" and had more experience with trucks (794, 1071).

In the instance there were more than one job to do in an email, the mechanics would just work on them as a group (879, 976-977). Likewise, if Samuel happened to see an email on Quinones' toolbox, he would just take it and perform the work (794). There have been times where Quinones gave Samuel the email wherein, he said that Bitler wanted Samuel specifically to work on it (799). If the email had small equipment on it, Quinones would give the email to Octavio since he was the small equipment mechanic (879). This was the same process when Bitler was Fleet Supervisor and has been the same since (881).

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<sup>8</sup> Bitler wanted truck mechanics to primarily work on trucks and small engine mechanics to primarily work on small engines (1042-1043).

Bryant would also compile the emails from Bitler and make a list and either give it to Quinones, Samuel, or Romo (935-936). Bryant would make this list, of all the equipment in Bartlett for repair, in Excel and put the equipment in the order in which the repair request was received (937, 1066-1067, 1076). At the end of the day, Bryant would then ask Quinones to report what has been completed on that list or “if it was waiting on parts or if we needed approval” (938-939; 1067-1068). Quinones did not have access to this Excel list and was not able to input or change anything in it (1076).

#### **4. Preventative Maintenance (“PM”) Work**

Preventative maintenance work has always existed since the company was formed (943). Preventative maintenance work primarily consists of oil changes, tune ups, and brake jobs on trucks (“PM Work”) (48, 49, 686). The oil and grease needed for PM Work is ordered only by Bitler (900-901). There were times as late as 2021 and 2022, where the mechanics could not perform the PM Work because they did not have the necessary oil and would have to wait for Bitler to order it (906-907).

The PM Work schedule is generated automatically from a software that tracks all the trucks (248). The software generates an automatic report that Bitler receives showing the piece of equipment based on “mileage and engineer hours” showing what pieces of equipment are due for PM Work and how overdue the PM Work on each piece of equipment is (“PM List”) (49, 50, 243, 248, 503, 901-904, Er. Ex. 8 at pgs. 10-11, 15, 17, 19, 21, 23, 28). Either Bitler or Bryant gives this report to Quinones or leaves it on his toolbox once or twice a month (248, 759, 778, 1008). On two occasions, Quinones sent the PM List to Abril via text for the Bolingbrook equipment since Abril was over all the Bolingbrook equipment (Er. Ex. 8).

Typically, each employee does the PM Work on their own accord (902-905). Employees would work off the PM List, do what they could, and then give it back at the end of the day (354-

356). Since Samuel started working at Sebert, he does most of the PM Work (778). Each time a piece of equipment came in shop for repair, he looks for list to see if it is on the list (759, 779) or if work were not too busy, he would proactively seek out the list (*id.*). Samuel determines which to do first by what equipment is available first (759-760). Quinones never instructed Samuel to do PM work (778). Also, during his entire employment, Samuel only went to another branch a few times to do PM Work (781). He was not sure who sent them to go because he was with a group that went (782).

Romo testified that he gets the PM List from Bitler either handed directly to him or he will take it from Quinones' toolbox (686-687, 713-714). If Romo sees the PM List on Quinones' toolbox, he asks Bitler, and then just grabs it because he knows it is his job to do PM Work (688). Once he gets the PM List, he starts working off it (*id.*). He just starts on the first truck on the list and works down, and if there is urgent PM Work, Bitler tells him which to do first (687). After he performs the PM Work, Romo fills out a form and gives it to Bitler or Bryant (688). If PM Work in another branch, Bitler is the one who tells Romo to go (715-716).<sup>9</sup> In fact, it is Bitler who tells employees to do the PM Work (324, 830).

Abril testified that he would receive the PM List from Quinones, but without any instruction (422 – 423, 443; ER Ex. 8). Abril stated Quinones would text him the list, but there are only 2 occurrences over the last two years showing that Quinones texted Abril the PM List, so this rarely occurred (511). When Abril got the PM List, he would independently determine what equipment to work on/see what equipment he had in the shop, and work on that one (504). He would then fill out a report and send it to Bartlett, specifically to Bryant (504, 519). Abril would

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<sup>9</sup> Bitler says it is up to Quinones to send mechanics to other branches to do PM Work, but there is no evidence this was ever told to Quinones or ever happened. To the contrary, the testimony supports that it is Bitler who sends the mechanics to other branches.

also perform PM Work on his own accord when the equipment was in the Bolingbrook shop for repair (528, 530).

As small engine mechanics, Octavio and Mariano did not perform much PM Work except for maybe in the winter (625-626) and when they do PM Work, they testified it was at the direction of Bitler (626, 830). Torres testified about how he has done PM Work although his testimony cannot be relied upon as it is very inconsistent.<sup>10</sup>

Quinones states he has never ordered anyone to do PM Work or told them to go look at the PM List (902-903) and Bitler states that it is a “team effort” to get the PM Work done (180).<sup>11</sup> However, Bitler has told Quinones to send the list to Abril and other employees and Quinones did that via text (904-905; Er. Ex. 8). Quinones has never told another mechanic to go to another branch to perform PM Work and if any mechanic did go to another branch, that order would come from Bitler (944-945).

Quinones also states the way PM Work has been done has not changed since Bitler was Fleet Supervisor (903-904).

## **H. Ordering Parts for Repairs**

Bitler admitted that ordering parts is not a supervisory function (1031). Quinones has ordered parts for the Fleet Center for about 15 years (850) which was well before he was ever Fleet Supervisor (165, 700). Quinones did not place big orders but just orders of one or two items (1077). Quinones could order parts up to \$1,000 (850-851) although Bitler says it was up to \$1,500

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<sup>10</sup> Torres said he went maybe once a month, 2-3 times per month, or every two to three months to do PM Work at another shop (314-316). Later, he says he did PM Work as a driver once or twice, but he was mainly a delivery driver, but then it was later as a mechanic that he performed PM Work (370-371). He then says again that, as a mechanic, he worked on PM Work every two or three months (371). This testimony is very inconsistent and can’t be relied upon. Although he did say that he would determine what to work on from the list on his own, take notes on what he did, and give the list back to Quinones (335-336).

<sup>11</sup> Bitler states it was up to Quinones to determine when and who did the PM Work but did not offer any testimony or evidence that was ever explained to Quinones (1010-1011).

(46-47). If it was more than \$1,000, then Quinones would go to Ralph for permission when Ralph was the Fleet Manager and then to Bitler when Bitler became Fleet Manager (856-857). At times, Bitler would tell him he could not order parts because it was over budget (852).

The Fleet Center also keeps inventory on hand of parts commonly used (46, 176-177). There are certain pre-set levels the company wants to keep in the inventory room so that there are always parts available (177). This was also the case when Bitler was Fleet Supervisor and has been the same way since (177). Bitler conducts a meeting where he has the mechanics write down what parts they need the most (664). Part of the Fleet Supervisor role (although unclear if this applied to Quinones) is to help maintain inventory levels (Bitler would sign off on bulk orders) (1-46,47, 666). Bitler orders all the parts for winter maintenance and the oil and grease for PM Work and has done this since he was hired (884). Bryant can also order parts (1032) and she would place big orders as approved by Bitler (1070).

Other employees can order parts for machines they are working on as well (164, 458 – 461, 633). Bitler testified that they need Quinones' permission (252), but no examples or evidence that this was communicated to Quinones or the other mechanics or that it occurred. Bitler attempts to give an example of Samuel needing permission from Quinones (253, 265), but Samuel testified he never went to Quinones for parts, he always went through Bitler for authorization (766-767; 783-784, 860; Pet. Ex. 5). Bitler stated Quinones "asked him if Samuel could order parts, but he quickly changed his answer to "he told me" (254). Samuel began ordering parts almost the same time he began working at Sebert because he did not want to wait for someone else to do it, so he talked to Bitler directly and got permission (766-767; 783-784). Bitler gave Samuel permission to do this because he has good English skills (254). Quinones had nothing to do with Samuel being able to order parts (860). Moreover, once Samuel diagnoses a problem with a truck or other equipment,

he writes it up on a PM sheet and goes to Bitler to ask him what he should do with it (760-761, Pet. Ex. 5). If Bitler approves the PM form, then Samuel orders the parts needed (765). When done with form, gives it to Bitler or Katie (766). Quinones plays no role when Samuel orders parts (766).

Similarly, Octavio has been able to order parts for the last 4 years and asks permission from Bitler or Bryant and has never had to talk to Quinones about ordering parts (630). Octavio spends about 5-10% of his time ordering parts (651). He does not really have a dollar amount/limit, he just tells Bitler the parts he needs, without paying attention to the price, and Bitler lets him know whether to buy it (653). When Mariano needs parts, he goes to Octavio and never goes to Marcos (816).

Romo doesn't order parts but tells Bitler he is going to NAPA to get it (717). If he needs another part, he tells Bitler or Samuel (Samuel because he speaks better English and because he is also working on trucks with Romo) (717; 746-747). He does not inform Quinones that he needs to order a part but goes to Bitler or Samuel (718; 747).

Abril able to order parts up to \$500, but that amount fluctuated (515), and anything above that, he would ask Quinones (458-461). Abril would also ask Quinones for parts prior to and after Quinones becoming Fleet Supervisor (509, 526). Abril did not know if Quinones approved it or if he had to talk to Bitler (527). Sometime in 2022, Abril was no longer allowed to order parts at the direction of Bitler (515; 857-858). Bitler told Quinones to tell Abril that he could not order parts anymore (858).

This process of ordering parts has been the same since Bitler started (854-855).

## **I. Reviews/Evaluations of Fleet Center Employees**

Bitler said that no reviews were conducted after 2019, but stated Quinones had input on the reviews (112, 122, 125, 240). Both can't be true. Bitler stated "...we haven't done reviews in

a while, but when it came to reviews, I would seek Quinones' feedback" (239-240). Bitler admits that the reviews with those forms or any review at all haven't occurred since he did them in 2019 (205-206, 240-241, 243) and he did not do them in 2020 or 2021 (206). Quinones has never performed any review or evaluated any employees and has never recommended to Bitler how employees should be evaluated each year on their performance (206, 894, 979-980).

Octavio testified that Quinones never did a review with him (632), but Bitler performed a review of Octavio as late as 2021 where Bitler evaluated him on various items (658-659). Romo testified that Bitler and Human Resources performed a review of him in 2021 (695). Quinones never played a role in his evaluations (*id.*). Samuel testified that he had evaluation by Bitler of his work performance about 8 months after he started (767). They had an agreement during Samuel's interview that he would get an evaluation at the 6-month mark about a pay raise and Bitler did that without Quinones playing any role in that review or evaluation (767-768).

#### **J. Wage Increases**

Bitler admits that Quinones did not recommend wage increases (124-125; 258) and Quinones never did (979). Bitler says he sought feedback from Quinones regarding employee performance (258), but then stated that Quinones' feedback did not have any impact (259) on how much of a raise Bitler would give (260).

Bitler is the one who determines whether someone gets a raise, and he sits down with the employee, talks to them about work, and performs an evaluation of sorts (206). Quinones did not play any role in employees receiving wage increases as Fleet Supervisor (894, 632, 698).

#### **K. Fleet Center Budget**

Quinones has no role with setting the budget (178; 895-896). As Fleet Supervisor, Quinones was never part of any budget discussions and never got a copy of the budget (896). Quinones never knew what the truck and small equipment parts budget was for 2020 or 2021 or

2022 (896). Once or twice a year Bitler would come to Quinones, show it to him very quickly and then leave right away and never gave Quinones any papers regarding the budget and no other meetings held with Bitler regarding the budget (896-897, 899). Quinones was not able to look up or know how much had been spent on the mechanics' hours and only Bitler had control of that (900, 956-957)

Bitler stated was Quinones' responsibly to stay within the parts budget (1-48) but there is not a lot of negotiating over part prices (1-66, 67). Quinones would gather part prices from vendors and then give that info regarding vendors and pricing to Bitler (*id.*). Bitler tells the employees if they are over the budget and cannot place any more part orders (656-657).

#### **L. Employee Belief as to Who is Their Supervisor**

Luis Abril, when asked what Bitler's role is now, Abril stated "He's the supervisor. Boss. The boss. The boss." (394). Octavio considers Bitler to be his supervisor because Bitler gives him orders, does his reviews, and approves his vacation (621, 623). Romo considers Bitler to be his supervisor because "he's the one that gives us instructions, always" (689) and he has never considered Quinones his supervisor (*id.*). Mariano considers Bitler his supervisor because he goes to Bitler when he needs something, is short hours, or needs time off (813). Even Marcos considers Bitler to still be the supervisor because Bitler continued to fulfill that role after he became Fleet Manager (884).

### **III. ARGUMENT**

#### **A. The Hearing Officer Should Find that Quinones is Not a Statutory Supervisor**

According to Section 2(11) of the Act (29 U.S.C. § 152(11)):

The term "supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employees, or responsibly to direct them or to adjust their grievances, or effectively to recommend such action, if in connection with the



foregoing exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Employees are statutory supervisors if: (1) they hold the authority to engage in any one of the 12 listed supervisory functions; (2) their exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment; and (3) their authority is held in the interest of the employer. *NLRB v. Health Care & Retirement Corp. of America*, 511 U.S. 571, 573-4 (1994). However, the Board is cautious not to construe supervisory status too broadly because the finding essentially strips an employee of his Section 7 rights. See *Pearl/Tech Security Network*, 308 NLRB 655, 660 (1992). The burden of proving supervisory status lies with the party asserting that such status exists. *NLRB v. Kentucky River Community Care, Inc.*, 532 U.S. 706, 711 (2001).

In this case, the Employer has not satisfied its burden of proving that Quinones is a statutory supervisor. A little over two years ago, Bitler had the title of Fleet Supervisor and Ralph Meyers was the Fleet Manager. As Fleet Supervisor, Bitler performed each of the statutory supervisory functions and rarely got his hands dirty working as a mechanic as will be discussed below. At this time, Meyers left the Employer and Bitler took over as Fleet Manager. Admittedly, Bitler simply took his supervisory authority with him and kept performing the same functions as he had as Fleet Supervisor when he became the Fleet Manager. He may have intended on making Quinones a bona fide supervisor, but he never did. Jeff Sebert, the owner of Sebert, told Quinones that he wanted to give him the title of “Fleet Supervisor,” but wanted him to keep being a mechanic and keep “wrenching,” something that Bitler did not do. Sebert ultimately gave Quinones the title of “Fleet Supervisor” but gave him none of the authority to act as a statutory supervisor. See *Dole Fresh Vegetables*, 339 NLRB 785 (2003) (well-settled that an individual’s duties—not job title—determines supervisory status). Bitler’s testimony is riddled with conclusory statements that Quinones had supervisory authority and that he held Quinones responsible, but provided no real

examples as discussed below. Such conclusory statements should be discarded as conclusory statements without supporting evidence do not establish supervisory authority. *Volair Contractors, Inc.*, 341 NLRB 673, 675 (2004); *Lynwood Manor*, 350 NLRB 489, 490 (2007); *Austal USA, L.L.C.*, 349 NLRB 561, 561 fn. 6 (2007); *Avante at Wilson, Inc.*, 348 NLRB 1056, 1057 (2006).<sup>12</sup> Similarly, Bitler spoke of various “expectations” of Quinones as Fleet Supervisor, but the employer did not provide any evidence that those expectations or authority were ever communicated to Quinones (54). Such lack of evidence must be construed against Sebert as the party asserting supervisory status. *Elmhurst Extended Care Facilities*, 329 NLRB 535, 536 fn. 8 (1999); *Dean & Deluca New York, Inc.*, 338 NLRB 1046, 1048 (2003).

Moreover, during the hearing much of the testimony and evidence offered at the hearing was “in conflict or otherwise inconclusive” which does not establish supervisory status. *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989). In that case, the burden does not shift, *Dean & Deluca New York, Inc.*, 338 NLRB 1046, 1047 (2003), and the burden remains on Sebert to establish supervisory status. *Benjamin H. Realty Corp.*, 361 NLRB No. 103, slip op. at 2 (2014). Sebert must prove it by a preponderance of the evidence, and this requires detailed, specific evidence, something Sebert was unable to accomplish during the hearing. *Veolia Transportation*, 363 NLRB No. 188, slip op. at 7 fn. 19 (2016); *G4S Regulated Security Solutions*, 362 NLRB No. 134 (2015).

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<sup>12</sup> Cases applying *Oakwood Healthcare, Inc.*, 348 NLRB 686, 689 (2006) have reiterated that, in terms of meeting the evidentiary burden to establish supervisory authority, purely conclusory evidence and testimony that lacks specificity (particularly with respect to the factors weighed or balanced in exercising putative supervisory authority) will not be sufficient to establish independent judgment. See, e.g., *Croft Metals, Inc.*, 348 NLRB 717, 722 (2006) (lead persons); *Golden Crest Healthcare Center*, 348 NLRB 727, 731 (2006) (charge nurses); *Avante at Wilson, Inc.*, 348 NLRB 1056, 1057 (2006) (staff nurses); *Austal USA, L.L.C.*, 349 NLRB 561, 561 fn. 6 (2007) (team leader); *Lynwood Manor*, 350 NLRB 489, 490 (2007) (RNs and LPNs); *Network Dynamics Cabling*, 351 NLRB 1423, 1425 (2007) (crew chief); *Pacific Coast M.S. Industries*, 355 NLRB 1422 (2010) (team leaders).

Finally, the evidence shows that any purported assignment or direction that Quinones may have given is either routine or clerical. Section 2(11) distinguishes between “independent” judgment and that which is “merely routine or clerical nature.” The question, accordingly, is whether a putative supervisor exercises a sufficient degree of discretion to constitute “independent judgment.” *NLRB v. Kentucky River Community Care, Inc.*, 532 U.S. 706, 714 (2001). As indicated below, Quinones tasks were of a clerical or routine nature such that he did not exercise independent judgment in any way. The specific evidence offered showed that Quinones never performed any of the 12 indicia that would make him a statutory supervisor. Even more telling is that Quinones was never told what his authority was a supervisor, and he consequently never exercised any authority. Thus, the hearing officer should find that Quinones is not a statutory supervisor.

**B. Hiring, Transfers, Suspension/Discipline, Layoffs/Recall, Promotions, Rewards (including Evaluations, and Wage Increases), and Adjusting Grievances.**

Since Marcos started working at Sebert over 22 years ago, he has never been involved in the hiring, transferring, suspension, discipline, layoff or recall, promotions, rewards, employee evaluations, wage increases, or adjusting grievances of any Sebert employee in any way whatsoever and never effectively recommended such actions either. The Employer offered no evidence that Quinones plays any role whatsoever in these indicia. In fact, the testimony elicited at the hearing was that Bitler had sole authority regarding most of these indicia (Hiring: 239-239, 753, 893; Transferring: 980; Firing or Retention: 239-240, 266, 979; Adjusting Grievances: 419-420, 633, 699-700, 770, 813, 819-820, 894-895; Evaluations: 112, 122, 125, 205-206, 239-241, 234, 632, 658-658, 695, 767-768, 894, 979-980; Wage Increases: 124-125, 206, 258-260, 698, 894, 979). All such decisions have been exclusively handled and made by Bitler and he never asked Marcos for his recommendation or opinion on such decisions. Bitler unsuccessfully

attempted several times to claim that he seeks Quinones' "feedback" in certain areas, but also admitted he makes these decisions independent of any "feedback." Consequently, none of these indicia apply to Quinones' supervisory analysis.

### **C. Time off Requests and Late Arrivals/Early Quits**

Marcos, at times, has a very limited non-supervisory role with regards to some time-off requests. The facts clearly indicate, at best Marcos is merely an occasional messenger or translator between an employee wanting time off and Bitler. Many employees do not use Quinones as a messenger or translator at all and go directly to Bitler. Bitler makes all decisions regarding time-off requests and Marcos does not sign any time-off requests, approve, or deny the request, or otherwise play any role in those decisions (Pet. Ex 3).

Bitler attempts to make Quinones' role much bigger than it is, but even when he tries to give an example of how Quinones must approve time off, his example fails. Bitler claims Quinones would come to him and say, "Octavio wants to take this time off" and Bitler would print out the form and give the approval on it (81). This example in no way shows Quinones approving time off or even recommending it, Quinones was simply a messenger. Quinones himself testified that he did not have any authority to approve or deny time off requests and that has been the same prior to and after him becoming Fleet Supervisor. Approving time off requests was one of the responsibilities of Bitler when he was Fleet Supervisor that he took with him when he became Fleet Manager. Thus, any role played by Quinones regarding time off requests does not rise to supervisory authority.

The same is true for late arrival and early quit requests. Quinones did not have authority to permit employees to either leave early or arrive later or effectively recommend to Bitler such action. When Bitler was the Fleet Supervisor, employees would contact him for such instances, and this has continued to happen since he became Fleet Manager. If other employees do contact

Quinones, the evidence shows that they are simply informing him, not seeking permission. Bitler attempted to give an example from “this year” where Romo had an issue with his children getting to school that Quinones approved without Bitler being involved at all (85). However, Bitler’s untruthful testimony unraveled on cross-examination when he admitted this started 3.5 years ago (189; 693-695; 738-741). Romo’s testimony corroborates this as well. Romo testified that he has asked Bitler each year over the last 3.5 years if he can have the same accommodation to his schedule just as he did this year (694-695; 736-737). This year, Romo went straight to Bitler with Quinones interpreting where Bitler gave him permission just like the previous 3.5 years (737-742). Quinones’ role was to help translate for Romo each time he went to Bitler and nothing more. Likewise, Quinones did not recommend to Bitler that Romo have his schedule changed (980-981). Bitler was untruthful about this example. There is no other evidence that Quinones allowed anyone to arrive late to work or quit early for the day. Thus, Quinones cannot be considered a statutory supervisor in this regard.

#### **D. Work Schedules and Overtime Assignments**

Quinones does not set employee schedules or effectively recommend anything relating to the other employees’ schedules. The testimony was consistent among the employees that the workers’ shifts and schedules are set at a staff meeting led by Bitler and Bryant. Quinones’ role in these meetings is no different than any other mechanic except him translating at times for those who could not understand. Bitler attempts to claim that he and Bryant would meet with Quinones prior to the meetings to discuss the work schedule, upcoming projects, and to come up with topics for the staff meetings but did not give any detailed testimony on exactly what Quinones’ role would have been in those meetings. Quinones testified that these pre-staff meeting meetings did not occur. Moreover, the Employer called Bryant as a rebuttal witness, but she offered no testimony corroborating Bitler’s account of these meetings.

Even if these meetings occurred and Bitler's testimony is credited, discussing work schedules, upcoming projects, and potential topics for the staff meetings does not make Quinones a statutory supervisor. At best, he is a lead man and /or foremen. The employees uniformly testified, including the Employer's employee-witnesses, that Bitler makes the determinations for their shifts and schedules in the staff meetings and that Quinones' role is not one of a supervisor, but one of a co-worker and translator, nothing else. The evidence overwhelming established that since Bitler began working at Sebert, he determined the employees' work schedule in the same manner, and nothing changed when he became the Fleet Manager and Quinones became the Fleet Supervisor. Quinones did not have any authority to alter the schedules of anyone and did not make any recommendations regarding schedules, even though he unsuccessfully tried once. This is yet again another responsibility Bitler took with him when he became Fleet Manager and did not give Quinones that authority. Thus, Quinones had no authority with respect to the employees' schedules or shifts.

The same is true for overtime assignments which were determined and assigned during the same staff meetings. As Bitler testified, spontaneous over time did not really occur, but was planned and assigned in advance. The employee witnesses testified that if there was any spontaneous overtime, it would be assigned by Bitler where he would ask for volunteers and no evidence was offered that Quinones acted on his own volition in assigning overtime.<sup>13</sup> Bitler gave conclusory testimony that Quinones would assign or recommend overtime but gave no examples of that. Such conclusory testimony should be disregarded.

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<sup>13</sup> The Employer attempts to prove this wrong by showing a one-off example where Quinones texts Abril to work the following Saturday but introduced no testimony and did not question Quinones as to why that text was sent. The evidence shows that Quinones was a messenger for Bitler due to language barriers and this was just another example of that. Quinones did not assign overtime on his own volition.

The employees' testimony contradicts Bitler's conclusory testimony. Quinones testified he did not have any authority to do so, and he never required an employee to work overtime or made any recommendation to Bitler regarding over time. Indeed, Vega, one of Sebert's employee-witnesses, stated that if overtime were needed beyond his pre-determined schedule, "[Bitler] would inform [Quinones] of those changed to me and in turn [Quinones] would relay the message over to us or we would find that information out in our meetings" (557-558). As such, the facts overwhelmingly show Quinones did not play a role in overtime assignments other than a messenger at times.

Similarly, Quinones played no part in determining Saturday overtime either. The testimony from the employees indicates that at all relevant times, Bitler either used a rotation system or volunteer system for determining Saturday overtime. Neither a rotation nor volunteer system is indicative of supervisory authority. Indeed, even if Quinones solely determined who worked overtime on Saturdays, he did not do so with independent judgment. The Board has not found independent judgment when the putative supervisors follow established patterns or rotational systems in assigning or directing subordinates. See *Croft Metals, Inc.*, 348 NLRB 717, 722 (2006) (lead persons followed preestablished delivery schedule and generally employed standard pattern in directing employees); *Shaw, Inc.*, 350 NLRB 354 (2007) (foremen made assignments by rotating unskilled and routine duties among available crew); *CNN America, Inc.*, 361 NLRB No. 47, slip op. at 22 (2014) (TVS managers followed established pattern in making assignments); *Modesto Radiology Imaging, Inc.*, 361 NLRB No. 84, slip op. at 2 (2014) (certain team leaders made assignments using rotational system). Moreover, assignments based on employee availability do not involve independent judgment. *Springfield Terrace LTD*, 355 NLRB 937, 943 (2010). Nor do assignments based on the expressed preferences of the employees.

*Children's Farm Home*, 324 NLRB 61, 64 (1997). Likewise, to any extent that Saturday overtime decisions are collaborative, that also is insufficient to show independent judgment free from the control of others. *CNN America, Inc.*, 361 NLRB No. 47 (2014) (citing *KGW-TV*, 329 NLRB 378, 381–382 (1999); *Veolia Transportation Services*, 363 NLRB No. 188, slip op. at 7–8 (2016). Thus, there is no way Quinones acted as a statutory supervisor with regards to overtime assignments of the other employees.

#### **E. Assignment and Responsible Direction**

Marcos does not assign or responsibly direct any employees of Sebert, but at most, is merely a messenger of Bitler, lead man, or working foreman. As with “independent judgment,” *Oakwood Healthcare, Inc.*, 348 NLRB at 689, sets forth the Board’s definition of “assign.” The Board defines “assign” as referring “to the act of designating an employee to a place (such as a location, department, or wing), appointing an employee to a time (such as a shift or overtime period), or giving significant overall duties, i.e., tasks, to an employee.”

At Sebert, when a mechanic is hired, Bitler informs him of whether he will be working as a truck/trailer mechanic or a small engine mechanic. Quinones plays no role in determining where the employee is assigned and Bitler makes all these determinations when he is hiring an employee for a specific role. For example, when Bitler hired Samuel (while Quinones was Fleet Supervisor), Bitler informed him that he would be a truck mechanic and that Bitler, not Quinones, would move him around the shop to different areas, something that subsequently occurred at Bitler’s direction and assignment. Quinones played no role in this. Likewise, when Mariano was hired by Bitler (again while Quinones was Fleet Supervisor), Bitler told him he would be assigned to the small engine mechanic position, something Bitler subsequently did. Marcos was not involved in that decision in any way and no evidence was offered showing Quinones assigning employees to different areas of the shop.



Moreover, there is also always an abundance of small engine repair work that must be completed by the small engine mechanics. If the truck/trailer mechanics are caught up on their work, they may go and help the small engine mechanics on their own accord. Even if Marcos assigned them to work with the small equipment mechanics in these instances, he does not do so with independent judgment because an assignment is made “solely on the basis of equalizing workloads” is not done with independent judgment. *Oakwood Healthcare*, 348 NLRB at 693. See *Golden Crest Healthcare Center*, 348 NLRB 727, 730 fn. 6 (2006) (charge nurses); *Shaw, Inc.*, 350 NLRB 354 (2007) (foremen); *Lynwood Manor*, 350 NLRB 489 (2007) (RNs and LPNs).

Likewise, Marcos does not responsibly direct any employees at Sebert. As the legislative history of the Act demonstrates, “responsibly to direct” does not include “minor supervisory functions performed by lead employees, straw bosses, and setup men.” *Oakwood* at 690; See Cf. *St. Francis Medical Center-West*, 323 NLRB 1046, 1047 (1997) (no supervisory status where putative supervisor is a “lead person, an experienced employee who directs the work of other employees engaged in routine work”). The work the Fleet Center employees perform is of a routine nature. Sebert has a fleet of equipment that the employees routinely work on and the overwhelming testimony from the employee-witnesses is that they already know what they are supposed to do given their positions within the Fleet Center.

### **1. Quinones Does Not Direct the Employees During a Typical Day of Work**

On a typical day, the mechanics arrive at their start time and just begin working. There is no need to wait for Quinones or Bitler to direct them as if there is broken equipment waiting for them from the outside maintenance and landscape crews, they fix it. After that morning rush, the employees simply get to work on the repairs that are in the shop without any need to be directed. Quinones rarely has to direct anyone and when he does, it comes directly from Bitler as a priority item.

**a. Bitler determined the priority of work.**

Priority work is not determined by Quinones, but is admittedly determined by Bitler, other supervisors or other branch managers. This priority comes in verbal form by Bitler (43), the other supervisors waiting at the shop during the morning rush, other supervisors calling the mechanics individually, or from emails and lists that come from Bitler and Bryant to the other mechanics. When there is a priority item on a truck, Bitler testified he would expect a truck mechanic to perform that repair and the same is true for small equipment mechanics performing work on small equipment. Everyone appears to have their job and knows what they are supposed to be doing. This has been the case since Bitler was Fleet Supervisor. In the case there were more than one job to do in an email from Bitler, the mechanics would just work on them as a group which does not rise to the level of independent judgment (879, 976-977). *CNN America, Inc.*, 361 NLRB No. 47 (2014) (citing *KGW-TV*, 329 NLRB 378, 381–382 (1999); *Veolia Transportation Services*, 363 NLRB No. 188, slip op. at 7–8 (2016) (Testimony that decisions are collaborative is insufficient to show independent judgment free from the control of others).

**b. Quinones did not exercise independent judgment.**

Even if Marcos evaluated skills and experience of the other mechanics or directed them to perform tasks based on their positions in the company, such skills, experience, and positions of the mechanics are well known, and no independent judgment is required where assignments are based on well-known employee skills. *CNN America, Inc.*, 361 NLRB No. 47 (2014) (citing *KGW-TV*, 329 NLRB 378, 381–382 (1999); *Shaw, Inc.*, 350 NLRB 354, 356 fn. 9 (2007) (citing *Volair Contractors, Inc.*, 341 NLRB 673, 675 fn. 10 (2004); *S.D.I. Operating Partners, L.P.*, 321 NLRB 111 (1996)); See also, e.g., *Sanborn Telephone Co.*, 140 NLRB 512, 515 (1963); *UpshurRural Electric*, 254 NLRB 709, 710 (1981); *S.D.I. Operating Partners, L.P.*, 321 NLRB 111 (1996) (direction and guidance based on experience and skill “involve[s] no real managerial discretion

that would require the exercise of independent judgment”). Thus, there is no evidence that if Quinones was directing the work daily, that he did so with independent judgment.

The same is true for any direction or assignment given from Quinones to the delivery driver. At all relevant times, there was only one delivery driver whose responsibility it was to not only pick up damaged equipment for repair and drop off repaired equipment, but also to routinely pick up parts for the mechanics. Judgment does not rise above the clerical or routine when “there is only one obvious and self-evident choice.” *Oakwood Healthcare*, at 693; *Brusco Tug & Barge Co.*, 359 NLRB 486, 491 (2013) (recess Board decision), incorporated by reference at 362 NLRB No. 28 (2015) (assignment of overtime to sole engineer); *Cook Inlet Tug & Barge, Inc.*, 362 NLRB No. 111, slip op. at 2 fn. 8 (2015) (assignment of tasks to sole deckhand); *Peacock Productions of NBC Universal Media, LLC*, 364 NLRB No. 104, slip op. at 3 (2016) (assignment of duties to sole associate producer). Likewise, Bitler had set the driver’s route for him to follow each week (308, 332, 338, 540) so Quinones was not directing the driver regarding going to other shops for equipment pickup and delivery<sup>14</sup>, only on part pickups. Vega stated that picking up parts was part of his normal set scheduled route (570). After he would go to the other branches on his regular route, he would go to pick up parts (571). It was so much part of his job that when he sees common part numbers, he would automatically know where to go (573). Thus, the sole person who was expected to pick up parts was the delivery driver.

Here, even if Quinones sent the driver on his own volition each time a part was needed (which is not the case), the direction or assignment of sending the sole delivery driver to pick up

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<sup>14</sup> There was no evidence provided that Quinones would send the drivers out for deliveries or pickups, but even if he did, there was no independent judgment there. Additionally, every machine had a color label, and each branch has its own color (599). When Vega picks up a machine for repair, the maintenance supervisors (not Quinones or Bitler) put the colored label on it wherein he specifies what work needs to be done on that machine (600 - 601). After that machine has been repaired, a piece of the label is torn off and that’s when Vega knows the machine is ready to go (600). Just by seeing the label, Vega knows it has been repaired and where to take it (600-601).

parts does not raise above the clerical or routine nature as there was only one obvious and self-evident choice to send the only person whose job it was to pick up parts. Moreover, Vega testified that other mechanics could divert him from his route as well and he had to follow that instruction because he had to pick up the parts (552) and he did not need permission to divert his route to get parts (551). Thus, any direction given to the driver by Quinones does not make him a supervisor.<sup>15</sup>

Also, Quinones did not send other mechanics to pick up parts. Octavio rarely leaves the shop and has only gone to pick up parts “maybe two or three” times during his 8-year employment (654) and when he did, it was Bitler that sent him (654). In those very few times, Bitler told him which vehicle to take (655). Likewise, during Romo’s entire employment he only had to go pick up parts or equipment for someone else from other locations 1 time that occurred over 5 years ago (720-721), but he will go pick up parts from NAPA when he needs them urgently (721). Bitler or Bryant will occasionally tell Romo to go pick up equipment or something as well (723-724). Thus, Quinones did not instruct other employees to pick up parts other than the sole delivery driver.

Moreover, Bitler admitted that although Petitioner’s Exhibit 1 (a job description for “Fleet Operations Manager”) may have changed a bit for his role as Fleet Manager, the nature and scope of this would still apply to him as Fleet Manager (135-136). This job description makes clear that it is the Fleet Manager’s responsibility to “delegate and prioritize workloads to mechanics,” “control and monitor overtime hours of personnel,” be “responsible for managing budgets, controlling expenses, prioritizing work distribution, and providing supervisory guidance for all

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<sup>15</sup> Vega testified that when his driving was over, he would ask Quinones what to do next and Quinones would say things like “take out the trash or organize oil that came in or antifreeze and just cleanup around the shop.” (557) Vega never did any mechanic work (562). Such direction and/or assignment is nothing but of a clerical or routine nature that does not rise to independent judgment. Such tasks are assigned to keep Vega busy and to equalize workloads.

employees under him” (Pet. Ex 1, pgs. 1-2). Thus, these were the responsibilities of Bitler, not Quinones.

**c. Quinones was not held accountable for any alleged direction.**

Most importantly, Marcos has never been held accountable for any direction he has given or for any of the actions of the other employees. Accountability of supervisory direction is shown by either negative or positive consequences to the putative supervisor’s terms and conditions of employment because of the putative supervisor’s performance in the direction of others. See, e.g., *Golden Crest Healthcare Center*, 348 NLRB 727, 731 (2006); *Peacock Productions of NBC Universal Media, LLC*, 364 NLRB No. 104, slip op. at 4 (2016). There must be a more-than-merely paper showing that such a prospect exists.” *Golden Crest Healthcare Center*, 348 NLRB 727, 731 (2006). In *Oakwood Healthcare*, itself, the Board found that accountability had not been shown because there was no evidence that the asserted supervisors had to take corrective action if their subordinates failed to properly perform their tasks, nor was there any indication the asserted supervisors were subject to discipline (or lower evaluations) if their subordinates failed to adequately perform the tasks in which they were directed. 348 NLRB at 694–695. Here, Marcos has never, in his 22 years of employment been disciplined, much less for other employees’ actions. He has never been reprimanded for any alleged direction he has given or even talked to by Sebert about the performance of another employee. Nor has he ever had to take corrective action if the other employees did not perform their job.

Bitler routinely gave conclusory testimony of how he holds Quinones “responsible” for the direction of other employees, but that conclusory testimony fails. Likewise, the Employer argues that the incentives given to Quinones somehow makes him a statutory supervisor by holding him responsible for any alleged direction of the other employees. However, this argument fails as well. First, the employer only offered evidence that Quinones is responsible for his direction in three

ways: an incentive for being below budget for “Truck and Small Engine parts” for 2020 and 2021, an incentive for “Mechanic hours within budget or below each month August – November” for 2020, and an incentive for overdue PM Services to be under a certain threshold for 2021 (Er. Ex. 2 and 4). For the reasons discussed below, these incentives fail to hold Quinones responsible for any alleged direction given to other employees.

First, Quinones did not have any control over the truck and small engine parts budget. Not only was Quinones not part of the budget talks for the Fleet Center, but he had no knowledge of the budget and could not see if they were over or under budget at any given time. Likewise, other employees, including Bitler himself, were allowed to order parts without seeking any authority or permission from Quinones. In fact, ordering parts is listed a job duty in the job description for a mechanic (Er. Ex. 7). The small engine mechanics would order their own parts under authority from Bitler, not Quinones. Quinones played no part in ordering parts for the small engine mechanics, and they never went to him to get parts. Similarly, he did not have control over truck parts budget either. Romo and Samuel testified they would either order their own parts on their own accord or through Bitler, not Quinones. They testified they never went to Quinones to get parts. Likewise, Abril who work out of the Bolingbrook shop could order his own parts up to \$500 per part without any authorization from Quinones or Bitler. In fact, it was Bitler who ordered Abril to stop ordering parts because he wanted to keep a closer track on the budget. Bitler likely wanted to keep the control of the budget to himself since he also received incentives related to the Fleet Center’s budget. Nevertheless, Quinones has no control or authority to meet these incentives, such control and authority landed with Bitler.

The same is true for PM Work. There is no evidence that Quinones had authority or exercised any authority with directing employees to perform PM Work. The schedule for PM

Work comes from an auto-generated list showing how overdue each PM Work is on each piece of equipment. That list of PM Work is generated by the software and sent to Bitler, who in turn gives it to the mechanics. Bitler testified that it was the Fleet Supervisor's responsibility to ensure the PM Work gets completed, but it was Bitler who controlled and ordered the oil and grease for that work and there is no evidence that responsibility was ever communicated to Quinones. Regardless, each employee would do the PM Work on their own accord and there is no evidence that Quinones directed anyone to perform PM Work.

Indeed, the company indicated in the job description that one of the responsibilities for a mechanic is to perform PM Work (Er. Ex. 7). The Employer introduced a text message from Quinones to Abril (who works in the Bolingbrook shop) where he sent him a picture of the PM List for the equipment in Bolingbrook to show Quinones directed the work of Abril, but Quinones did not include any instruction with that picture. This is because Abril is responsible for all the repairs and PM Work in the Bolingbrook shop.<sup>16</sup> Abril stated that once he got the list, he would independently determine what work to perform off the list (504, 528, 530) and then he would let Bitler, or Bryant know of his progress. In these cases, Quinones was once again a messenger for Bitler. Even if this is considered an assignment or direction from Quinones, when there is one

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<sup>16</sup> Abril testified that Quinones would tell him what work he needed to do (399, 400) and he would report to Quinones mechanical problems at Bolingbrook (399, 499), but when asked if he needed to be told what to do during the summertime in Bolingbrook, he responded with "on occasions he would send me via text message photocopies of the equipment that needed to be worked on (400, 500) This was PM work. This is because Abril said that he was responsible for all the equipment repairs from the Bolingbrook branch and if a piece of equipment came into the Bolingbrook shop, he knew he had to fix it without needing any order or direction from Quinones (499-500). When he would arrive each day, he already knew what he needed to work on, and that information did not come from Quinones (500). He would only report to Quinones the repairs he had done, but not all the time (500, 520). Abril was asked who made the decision as to what mechanic would come to BB to assist him and he stated, "Marcos and I believe he consulted with--" and then he stopped his answer (402). Abril would be called to come to Bartlett in the wintertime to get saltshakers ready or for the monthly meetings (413-414). When called to come to Bartlett it was Dan and/or Quinones that would call him to come (404). Abril would call Quinones, but Abril did not know if Quinones would make the decisions or if Quinones had to talk to someone else (535).

clear and obvious choice, no independent judgment exists, and Quinones is not a statutory supervisor.

Like Abril, the other mechanics at the Bartlett shop would perform the PM Work on their own volition without any direction from Quinones. Both Samuel and Romo testified that Quinones never instructed them to do PM Work, they just knew it was their responsibility to complete on the trucks since they were truck mechanics. In fact, the testimony shows, that if anyone told them to do PM Work, it was Bitler (324, 830). The same is true for the small engine mechanics who testified they really don't do much PM Work, but when they do, that direction comes from Bitler.

In truth, Quinones had no real control over the PM Work given that Bitler controlled the orders for the oil and grease (Quinones testified that there were times they did not have the supplies necessary to perform the PM Work and would have to wait on Bitler to order them). Likewise, there is no evidence that Quinones was told he had any authority to direct employees to perform any work, tasks, or duties, much less PM Work. Even if Quinones did direct employees to perform PM Work, such a direction is routine or clerical and does not rise to the level needed to establish that Quinones is a supervisor.

Quinones also did not understand the incentives because he cannot read English and they were not provided to him in Spanish. The incentives were also barely explained to him in English by Bitler and Quinones did not know what they meant until the hearing when the translator was reading them in Spanish.

The Employer also argues that Quinones was responsible for the cleanliness of the shop and thus that makes him a supervisor. This argument fails. The employee-witnesses testified that it was Bitler who directed the cleaning in the shop and that each mechanic was responsible to keep their own workspace clean and when they would clean the shop, they would all work together as



a group which is insufficient to show independent judgment. *CNN America, Inc.*, 361 NLRB No. 47 (2014) (citing *KGW-TV*, 329 NLRB 378, 381–382 (1999); *Veolia Transportation Services*, 363 NLRB No. 188, slip op. at 7–8 (2016) (Testimony that decisions are collaborative is insufficient to show independent judgment free from the control of others.)).

The Employer points to a July 2021 review wherein Bitler listed that the Fleet Supervisor will be responsible for keeping the Fleet Center clean and organized, but it does not explain his authority in being able to direct other employees to do so (Er. Ex. 4). It should be noted that in this 2021 review was the first time anyone had given Quinones a job description of his position as Fleet Supervisor. Bitler admitted he created this job description shortly prior to this review (106). In review of the job description, there is little mention of any supervisory indicia. Moreover, Bitler wrote, “It is time for you to increase your focus on the management of the Fleet Center and its overall operations. Over the next couple of seasons, we will be asking more of you on the supervisor management side of the business” (Er. Ex. 4). This echoes the testimony of Bitler that Quinones was not given the same role that Bitler had when he was Fleet Supervisor and that they were attempting to ease Quinones into the supervisory position.

Bitler’s testimony is telling in this regard. Bitler testified his role with helping Quinones learn how to be the Fleet Supervisor was:

Working with him. Using the software, like the GPS software. Giving him contact lists. Letting him know who to call when. Vendors, our outside repair shops. Again, we just, you know, we took it in small steps of getting them acclimated to being a supervisor (233).

None of those things apply to any of the supervisory indicia. The truth is, Bitler kept the control and responsibility and never gave that authority to Quinones and would belittle him in front of other employees, and Bitler never really gave him the opportunity to be the Fleet Supervisor.<sup>17</sup>

More importantly, Quinones was not given this job description or review in English, and it was not explained to him (958-960, 962). Quinones stated there was tension between him and Bitler regarding the promised \$2/hour raise that he never received and Bitler would rush him through these things without explaining it. Quinones stated he was starting to understand some of these things while he was testifying because the translator was reading it in Spanish. Thus, it has not been established that Quinones ever had or ever knew he had any alleged supervisory authority. Thus, if Quinones gave any direction to employees, it was not responsible direction as required to make him a statutory supervisor and the Employer has failed to meet its burden.

#### **F. Secondary Indicia**

There are several secondary indicia that favor finding that Marcos is not a supervisor. Non-statutory indicia can be used as background evidence on the question of supervisory status but are not themselves dispositive of the issue in the absence of evidence indicating the existence of one of the primary or statutory indications of supervisory status. See *Training School at Vineland*, 332 NLRB 1412, 1412 fn. 3 (2000); *Chrome Deposit Corp.*, 323 NLRB 961, 963 fn. 9 (1997). Cf. *K.G. Knitting Mills*, 320 NLRB 374 (1995) (reversing, where no primary indicia were present, finding of supervisory status based solely on fact individual had key to factory, opened facility in the morning, “watche[d] everything” before the manager arrived, and dealt with trucks arriving at plant).

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<sup>17</sup> Quinones offered an example of this where “in winter, the owner wanted the trucks to be cleaned up. And when I will tell [Bitler] that the trucks were dirty, he will turn around and tell the drivers, whoever was driving those vehicles, that I’m sure you don’t want to listen to this shit” (942). Quinones said instances like this happened several times (942).

### **1. Employees Consider Bitler Their Supervisor and Did Not Know Quinones was the Fleet Supervisor**

First, none of Quinones' co-workers in the Bartlett shop consider him to be their supervisor but consider Bitler to be their supervisor (see Facts Section above). Additionally, many of Quinones' long-time co-workers never even knew he received the title of Fleet Supervisor (see Fact Section above). They did not know until "all of the stuff with the union started" this year. This is indicative of how Bitler kept the responsibilities to himself, did not delegate any authority to him regarding supervisory status, and did not hold him out to be the Fleet Supervisor. The Company did not announce to the employees Quinones was their new supervisor, did not give him a supervisor uniform, did not give him anything on his uniform separating him from the rest, did not give him an office, desk, or computer like Bitler had, and did not even tell new employees that Quinones was the Fleet Supervisor.

Although the Company and Bitler may have wanted Quinones to become a bona fide supervisor, they admittedly did not give him the same role as Bitler and wanted to ease him into the role, but they never gave Quinones that authority or opportunity and the employees clearly did not think he was a supervisor either. Indeed, Quinones stated that Bitler "never allowed me or gave me any authority to do things in the shop" (924).

The perception and testimony from Quinones' coworkers are telling as well:

Octavio	Testified that Quinones did the same job as him as in repair machines, trucks, trailers, etc. (623). He considers Quinones' job to have been the same for the last 8 years and his role has not changed from his perspective (646) and Quinones never took over the role that Bitler had when he was Fleet Supervisor (633-634). Says he does all types of mechanic jobs; trailers, trucks, tractors, anything (639). He stated that Quinones performs mechanic work 80% of the time; other 20% he is at lunch, ordering parts, or speaking with the construction/maintenance workers that are waiting for the machines, just like the other mechanics do (640-641).
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Romo	Quinones' job has not changed during his employment (710) and Quinones is the same as him, which is a mechanic, because Quinones has always worked repairing equipment (700). Only sees him working on equipment most of the time and when not wrenching, ordering parts (731). He has not observed Quinones giving directions to other mechanics (731-732). From his perspective, Quinones never took over the same role Bitler had as Fleet Supervisor (701).
Samuel	Quinones had same job as him as a mechanic (770). He states that 80-90% of the time Quinones was doing repairs just like them doing "PM services, work on machines because he has a lot of experience." (770-771). He only ever saw Quinones working on equipment or ordering parts (771). For comparison, Samuel works 95% of time and ordering parts 5% of time (790).
Mariano	Quinones had same job as him, a mechanic, because he was doing the same job, had the same uniform and got dirty like him (820). He stated that Quinones spent 90% of time working on equipment, other 10% ordering parts, lunch, or go to the bathroom, things like that (821).
Abril	Although Abril did not work in the same shop as Quinones, he described Quinones as a coworker which he said meant "fellow mechanic" (394).
Vega	When Vega was in the shop, he noticed Quinones would do "just typical things in the shop. You know, getting parts or ordering parts that were needed for repair. He would take machinery, broken down machinery and put it down - - put it into the system. He would help repair damaged trucks or company equipment." (543).

Bitler attempts to contradict the testimony of the employees who worked daily next to Quinones by claiming that Quinones only worked as a mechanic 20-30% of the time and the rest of the time Quinones was expected to run the shop doing supervisory functions (233). However, Bitler admitted that these expectations were not communicated to Quinones (208-209; 262-263). On cross examination, Bitler admitted that he cannot accurately know what percentage of the time Quinones was working on equipment (1015) and admits that he does not actually know if Quinones was only working on equipment 20-30% of the time (263, 1015-1016).

Bitler attempts to point to Employer Exhibit 13 which are time detail reports showing various codes of employee time records from February 1, 2021, to August 2, 2022 (992, 994; Er. Ex. 13). However, these records cannot be relied upon and are flawed for several reasons.

First, scanning properly is not heavily enforced (1058) and Romo for example claimed he is supposed to scan, but does not (745-746). Quinones stated as well that he did not scan when he was working on trucks or assisting other employees with repairs (910). If an employee is not scanning, it would not appear on this time detail report and Bitler admittedly does not know if his employees were scanning all the time (1017-1018).

Second, if the mechanics worked on a piece of equipment that did not have a code to scan, it would not show up on the report either (1018).

Third, the time stamps are not accurate either (1020) and Bitler admits he routinely adjusts the time stamps so there are no gaps in the day, and he is the one who makes the decisions on how to fill the gaps (1022, 1024). If there was a gap, he did not know what the employee was doing, so he would just pick something without talking to the employees (1024-1025).

Fourth, several entries contain a line stating “auto inserted” or “One or more later entries deleted” which tend to indicate automatic entry without human input, or human action that entries were deleted, and Bitler did not testify what these meant (1027; Er. Ex. 13). These types of codes are also found under entries for Quinones (see for ex. Er. Ex. 13 @ pg. 40).

Fifth, the corporate codes Bitler testified about (IDL) that he says indicate “supervisor work,” do not actually indicate anything except that Quinones was performing “all work related to work done in the Fleet Center” (1050-1051). Bitler attempts to list items that could be covered under these codes and none of the tasks he listed were supervisory work (1051). The “IDL” code does not equal “supervisor work” (1029) and Bitler does not really know what Quinones is doing

since he is not down on the floor all day so it could be anything. Bitler says it could be assigning tasks, although that does not take long, or talking to Katie at the end of the day to report repairs, which doesn't take long either, or ordering parts (not supervisory) (1031-1033). Bitler testified that he "couldn't say specifically what [Quinones] was doing. And it is quite possible he could jump in and help a guy out working on something" (1033). In when Bitler was asked if Quinones, while the Fleet Supervisor, would help repairing equipment as needed, Bitler stated with an emphatic "Yes, oh yes" (268). Also, if Quinones did not scan the equipment, it would not be reflected on the report (1034). Moreover, several non-supervisory employees also have worked under that code (see for ex. Er. Ex. 13 at pgs. 14, 47). Similarly, the reader cannot decipher from the reports when a driver was picking up parts, as it would be coded the same as a delivery or pickup (1038).

Sixth, if an employee does not manually scan out of a piece of equipment or other corporate code, it keeps them scanned into that code even if they are working on something else (1038-1040) and there is no way to know when that is happening on these reports. Similarly, the reports do not show the monthly staff meetings, not even for Abril who is coming from Bolingbrook (1052).

Finally, Quinones did not have the authority to enter or adjust any time in the Timescape database, only Bitler and human resources (1050). In sum, Er. Ex. 13 cannot be relied upon as an accurate reflection of what, if any, supervisory work Quinones may have performed, and it should be disregarded.

## **2. Quinones Did Not Attend Management Meetings, Wore the Same Uniform as the Other Mechanics, and Was Not Salaried**

When Bitler held the title of Fleet Supervisor, he wore a different Sebert-issued uniform than the rest (polo type shirt with company logo, dark colored pants, steel toe) (267). He also had office space with a desk and computer, and rarely, if ever, helped wrench. On the other hand,

when the Company gave Quinones the perfunctory title of “Fleet Supervisor,” it did not give him a truck (even though he asked for one), he did not get the supervisor uniform (still wearing the same mechanic uniform as everyone else), did not get anything on his uniform indicating he was the supervisor, he did not get office space, a desk, or a computer, and continued to wrench for the same amount of time he did prior. Indeed, when Jeff Sebert gave Quinones the title of Fleet Supervisor, he told Quinones he wanted him to continue wrenching. Thus, not even the Employer treated him as a Fleet Supervisor and did not make him a salaried employee like Bitler was as Fleet Supervisor, but instead gave Quinones a new title, a \$1 per hour raise (although \$2 was promised) and nothing else. According to Quinones, he has been performing the exact same job for the last 22 years. Nothing changed in his duties prior to and after receiving the title of Fleet Supervisor. Thus, Quinones is not a statutory supervisor.

Additionally, Quinones did not enjoy any other added benefits as “Fleet Supervisor.” Although Jeff Sebert told him he would be invited, Quinones was never invited to and never attended any supervisory or management meetings (Bitler did every Wednesday as Fleet Supervisor and still does as Fleet Manager). Quinones is at best nothing more than a lead man or working foreman, and more so a messenger and translator for Bitler. He does not perform any of the supervisory indicia and the secondary indicia fall in his favor of not being a supervisor.

#### **IV. CONCLUSION**

For all the foregoing reasons, Quinones is not a statutory supervisor. Quinones may have received the title of “Fleet Supervisor” but he was never given any authority and never exercised any alleged authority. Bitler was the real supervisor of the Fleet Center and acted in that capacity since the time he was hired, and nothing changed when he became the Fleet Manager. Since Quinones did not have any authority and did not perform any of the 12 supervisory indicia, the hearing officer should find that he is not a statutory supervisor.

Dated: September 14, 2022

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that he electronically filed the foregoing **Local 150's Post-Hearing Brief** via the National Labor Relations Board website and served a true and correct copy upon the following individual via email on this 14th day of September 2022:

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**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 13**

SEBERT LANDSCAPING COMPANY

and

Case 13-RC-295213

INTERNATIONAL UNION OF OPERATING  
ENGINEERS, LOCAL 150, AFL-CIO

**POST-HEARING BRIEF OF EMPLOYER, SEBERT LANDSCAPING COMPANY**

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## TABLE OF CONTENTS

I.	INTRODUCTION and PROCEDURAL POSTURE .....	1
II.	GENERAL BACKGROUND ON THE COMPANY AND ITS FLEET CENTER .....	2
	A. The Company's Business and Operations .....	2
	B. The Management Structure of the Fleet Center, Quinones' Promotion to Fleet Supervisor .....	3
	C. Quinones' Compensation as Fleet Supervisor .....	5
III.	ARGUMENT: QUINONES WAS A SUPERVISOR UNDER THE ACT .....	6
	A. Supervisor Standard .....	6
	B. Quinones Assigned Work to Fleet Center Employees .....	7
	C. Quinones Responsibly Directed the Fleet Center Employees.....	13
	1. Quinones Directed PM Work.....	13
	2. Quinones Directed Repair Workflow .....	17
	3. Quinones Directed Urgent Repair Work.....	18
	4. Quinones Directed the Work of the Drivers .....	20
	5. Quinones Directed Mechanics Related to Parts Management .....	21
	6. Quinones Directed the Overall Cleanliness and Organization of the Shop .....	22
	7. Quinones was Accountable for the Work of the Shop Employees .....	23
	D. Most of Quinones' Time Was Spent Supervising - Not on Performing Repair Work .....	24
	E. Quinones Exercised Independent Judgment in the Assignment and Direction of the Fleet Center Employees.....	25
	F. Quinones' Held His Authority in the Interest of Sebert .....	27

G. Secondary Indicia Supports a Finding that Quinones Was a Statutory Supervisor .....	27
H. Quinones Claimed Lack of Understanding Is Not Credible .....	28
IV. CONCLUSION.....	30

## TABLE OF AUTHORITIES

<b><u>Cases</u></b>	<b><u>Page(s)</u></b>
<i>Arlington Masonry Supply, Inc.</i> , 339 NLRB 817, 172 LRRM 1437 (2003) .....	7
<i>Golden Crest Healthcare Center</i> , 348 NLRB 727, 731 (2006) .....	13, 23
<i>Mountaineer Park, Inc.</i> , 343 NLRB No. 135, 176 LRRM 1378, 1380 (2004) .....	7
<i>NLRB v. Health Care &amp; Retirement Corp. of America</i> , 511 U.S. 571, 573-574, 114 S.Ct. 1778, 128 L.Ed.2d 586 (1994) .....	7, 27
<i>NLRB v. Kentucky River Community Care, Inc.</i> , 532 U.S. 706, 121 S.Ct. 1861, 149 L.Ed.2d 939 (2001) .....	7
<i>Oakwood Healthcare, Inc.</i> , 348 NLRB 686, 689 (2006) .....	7, 13
<i>Packard Motor Car Co. v. NLRB</i> , 330 U.S. 485, 488-489 (1947) .....	27
<i>Peacock Productions of NBC Universal Media, LLC</i> , 364 NLRB 1523, 1526 (2016) .....	13, 23
<i>Trustees of Noble Hospital</i> , 218 NLRB 1441, 1442 (1975) .....	7
<i>Woodman's Food Market, Inc.</i> , 359 NLRB 1016 (2013) .....	11, 26
 <b><u>Statutes</u></b>	
29 U.S.C. § 152(11) .....	6

Employer, Sebert Landscaping Company (“Sebert” or the “Company”) hereby submits its post-hearing brief:

## **I. INTRODUCTION and PROCEDURAL POSTURE**

Petitioner, International Union of Operating Engineers, Local 150, AFL-CIO (“Petitioner” or “Union”) filed a petition on May 5, 2022 seeking to represent a bargaining unit of employees who work in Sebert’s “Fleet Center.” (Bd.Ex. 1(a)).<sup>1</sup> The Employer objected to the inclusion of the Fleet Supervisor, Marcos Quinones (“Quinones”) in the petitioned-for unit on the basis that Quinones is a statutory supervisor under Section 2(11) of the National Labor Relations Act (the “Act”). A stipulated election agreement was reached that allowed employees in the classification of “Fleet Supervisor” to vote subject to Board challenge. (Tr. 10).<sup>2</sup>

An election was held on June 8, 2022 at the Employer’s facility. At that election, 10 total votes were cast: 5 in favor of the Union; 3 against the Union; and 2 challenged ballots. (Bd.Ex., 1(a)). Quinones ballot was challenged by the Board pursuant to the stipulated election agreement. (Tr. 10). The Union challenged the ballot of Zachary Pearce, on the purported grounds that he is related to a managerial employee and is a seasonal employee. The challenged ballots, therefore, were determinative and the Region took up proceedings on the challenged ballots. (Bd.Ex., 1(a)).

Sebert also filed a timely objection to conduct affecting the election, alleging that Quinones engaged in pro-Union conduct that, in light of his status as a statutory supervisor, tainted the showing of interest as well as affected the outcome of the election. (Bd.Ex., 1(a)). On, August 4, 2022, the Region opened a hearing on the parties’ challenged ballots and the

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<sup>1</sup> References to the Exhibits introduced at the hearing are made herein as follows: Board Exhibits as “Bd.Ex. \_\_”; Employer Exhibits as “Er.Ex. \_\_”; and Petitioner Exhibits as “Un.Ex. \_\_”.

<sup>2</sup> References to specific pages in the Official Report of Proceedings” are made as follows: “Tr. ##.”

Employer's objection. (Bd.Ex., 1(d) & Tr. 5). During the first day of the hearing, the Company and the Union entered a stipulation that the ballot of Zachary Pearce should not be counted. (Tr. 211-15). The challenge to his ballot resolved, the outstanding Board challenge to Quinones' ballot was no longer determinative. (Tr. 214). Accordingly, the Region issued a Supplemental Order Limiting the Hearing to the Employer's Objection and Further Limiting Evidence to Supervisory Status ("Supplemental Order") (Bd.Ex. 2). In the Supplemental Order, the Region limited the inquiry at the hearing to only Quinones' status as a supervisor under the Act, leaving aside any inquiry into whether, if he is determined to be a supervisor, he engaged in objectionable conduct. (Bd.Ex. 2).

As discussed more fully below, the evidence adduced at the five-day hearing compels that Quinones, in the role of Fleet Supervisor, was a statutory supervisor under the Act. Specifically, the testimony and evidence determines that Quinones was authorized, in the interest of the employer, to responsibly direct the Fleet Center employees and to assign work to them. He also was deeply involved in the overall management of that department. Moreover, secondary indicia of supervisory status also support a finding that Quinones, at all times relevant, was a statutory supervisor.

## **II. GENERAL BACKGROUND ON THE COMPANY AND ITS FLEET CENTER**

### **A. The Company's Business and Operations**

Sebert is engaged in landscape maintenance and landscape construction. (Tr. 22). It operates out of seven branches in northeastern Illinois and southeastern Wisconsin. (Tr. 20). It maintains its corporate offices, as well as the "Fleet Center" at issue in this matter, at its Bartlett, Illinois location. (Tr. 24). The Fleet Center is the maintenance shop<sup>3</sup> where the primary work of

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<sup>3</sup> The terms "Fleet Center" and "shop" are used interchangeably. (Tr. 52-53).

repairing and maintaining its vehicles and equipment occurs. (*Id.*) The Company has over 200 vehicles and trucks in its fleet as well as numerous other types of equipment used in its operations, such as mowers, trimmers, blowers, skid steers, snow equipment and trailers. (Tr. 20-22).

**B. The Management Structure of the Fleet Center, Quinones' Promotion to Fleet Supervisor**

The Fleet is managed by a Fleet Manager. The Fleet Manager's duties involve the purchase of new vehicles and equipment, the sale of old vehicles and equipment, licensing/registration of vehicles and equipment, managing and overseeing highway and fuel taxes, U.S. Department of Transportation regulations registration renewals, and the overall maintenance and repair of the fleet vehicles and equipment. (Tr. 20-21).

Currently, Dan Bitler ("Bitler") is the Fleet Manager. (Tr. 19). Bitler's duties as Fleet Manager take him away from the shop for two days per week on average to other Sebert branches and elsewhere. (Tr. 934). He has served in that position since the later part of 2019, when he was promoted to the position when his predecessor, Ralph Meyer ("Meyer"), left the Company. (Tr. 32-33). From his hire in 2016 to his promotion to Fleet Manager, Bitler served as the Fleet Supervisor, a position that reports to the Fleet Manager. (Tr. 19, 130-31). As noted, the position of Fleet Supervisor is the classification at issue in the instant matter.

Quinones was hired as a mechanic in the Fleet Center in 2000. (Tr. 159). Effective October 21, 2019, shortly after Bitler was promoted to Fleet Manager, Quinones was promoted from mechanic to Fleet Supervisor. (Tr. 31-33; Er.Ex. 1). Quinones was called to a meeting with Sebert's owner (Jeff Sebert), Bitler, and two other Sebert management/administration employees. (Tr. 864-867, 916-917). From that very first meeting in which he was informed of his promotion to Fleet Supervisor in late summer 2019, Quinones was instructed, and understood,



that he was being made the supervisor. (Tr. 915-920). As acknowledged by Quinones in his testimony, Jeff Sebert told him that, as the supervisor, while he would continue to perform some mechanic work (which Quinones greatly welcomed), he was also responsible “to make sure or try to make sure that the work was taken care of.” (Tr. 917). Quinones fully understood that the work he responsible to “take care of” was the work of all the employees in the Fleet Center shop, including the truck mechanics, machinery mechanics, and the delivery driver—and he testified he understood, as Fleet Supervisor, that he was in charge of making sure the Fleet Center employees were doing their work. (Tr. 917-19, naming “shop group” employees he understood he was to supervise and to make sure they were doing their work). Quinones testified that he obediently followed Jeff Sebert’s instructions and ensured that the work of the entire group of employees working in the shop was completed and taken care of. (Tr. 919-20).

The Fleet Supervisor job description additionally lays out the authority given the supervisor to direct the shop employees. Specifically, that job description states that the Fleet Supervisor’s “basic functions” include, among other things, that he “Oversee ... repairs to vehicles and equipment,” “Delegate tasks amongst mechanics to ensure timely repairs and P/M’s,” “Oversee and track transport of equipment between branches and or vendors,” “Work ... to keep shop related costs within budget,” “Work with Fleet Admin on ordering parts and supplies for repairs, and “Keep shop in a clean and organized state.” (Er.Ex. 4, p. 1). That job description further described that “the Fleet Supervisor’s primary responsibility will be to maintain steady workflow through the Fleet Maintenance Department [and] will also include the workflow through the other branches that have mechanics assigned.” (*Id.*) The job description stated further that the “Fleet Supervisor will be responsible for keeping the Fleet Center clean and organized.” (*Id.*)

As both Bitler and Quinones were new to their roles, the Company also decided to bring on a Fleet Administrator, Katie Bryant (“Bryant”), to perform administrative duties in the Fleet Center. Prior to that time, there was no Fleet Administrator. (Tr. 154-55).

**C. Quinones’ Compensation as Fleet Supervisor**

In conjunction with Quinones’ promotion to Fleet Supervisor, he was given a raise from the rate he was making as a mechanic. Quinones understood the raise was because of his promotion to supervisor. (Tr. 920; see also Er.Ex 1, “Status/Payroll Change Report” reflecting Quinones’ raise and giving the reason: “Promotion 10/21/2019”). While Quinones claims Jeff Sebert offered him a \$2/hour raise upon promotion to Fleet Supervisor, Quinones initially only received a \$1/hour raise. (Tr. 867, 920; Er.Ex. 1). Acknowledging that he was being promoted to supervisor, Quinones also requested that Sebert give him a Company truck. (Tr. 867).

While his request for a Company truck was not granted, Quinones was given a series of incentive pay packages as Fleet Supervisor. Quinones testified that after he became the Fleet Supervisor, Bitler informed him that he would be able to get incentive pay if the employees in the shop group did their work on time and saved on parts. (Tr. 920-21). Quinones also testified that Bitler informed him he would be eligible for incentive pay if the mechanics’ hours in the shop stayed within budget. (Tr. 921-22). Quinones understood that no mechanics were eligible for the incentive pay that he was eligible for as the Fleet Supervisor. (Tr. 921). On August 3, 2020, Quinones was granted his first formal, written incentive pay package, with benchmarks that made him eligible to receive up to \$600 total incentive pay per month for the 4 remaining calendar months of 2020, on a sliding scale, if certain benchmarks were obtained. (Tr. 89-93, 920-25; see also Er.Ex. 2). The purpose of the incentive plan was “to encourage [Quinones] to manage and focus on the budget in the Fleet Center.” (See Er.Ex. 2). In that package, Quinones could earn up to \$500/month if he managed to keep the Fleet Center parts expenditure below

budget, and an additional \$100/month if he managed to keep the Fleet Center mechanics' hours at, or below, budget. (Er.Ex. 2). Quinones signed his acknowledgment of the 2020 incentive plan. (Tr. 923; Er.Ex. 2). Quinones achieved incentive pay under both prongs of the 2020 incentive plan in the very first month it was in place. In August 2020, Quinones was awarded a total of \$400 (\$300 for keeping the parts expenditure between 5% and 10% under budget; and \$100 for keeping the mechanics' hours under budget). (Tr. 99-101; see also Er.Ex. 3).

Thereafter, on 7/9/2021, Quinones was given an additional \$1.50/hour raise (retroactive to May 15, 2021), as well as an updated incentive plan. (Er.Ex. 4, p.3). The purpose of Quinones' 2021 incentive package was "to encourage [him] to manage and focus on the budget and P/M Services of the Fleet Center." (Er.Ex. 4, p.3). Under the 2021 incentive package, he was still eligible to receive up to \$500/month for keeping the truck and small equipment parts budget below budget; but he also became eligible for up to \$250/month if he managed the PM services such that they were kept to less than 20% overdue on a monthly basis. (Er.Ex. 4, p.3). Quinones signed his acknowledgment of the 2021 incentive pay package. (*Id.*) While Quinones failed to reach his incentive benchmarks to qualify for any bonus pay in 2021, the same is true for Bitler, who earned incentive pay in 2020, but failed to do so in 2021. (Tr. 201-02).

### **III. ARGUMENT: QUINONES WAS A SUPERVISOR UNDER THE ACT**

#### **A. Supervisor Standard**

The Act defines the term "supervisor" as any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. 29 U.S.C. § 152(11); *see also NLRB v. Kentucky River Community Care, Inc.*, 532 U.S. 706, 121 S.Ct. 1861, 149 L.Ed.2d 939

(2001). Employees meet this statutory definition if: (i) they hold the authority to engage in any one of the twelve listed functions; (ii) their exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment; and (iii) their authority is held in the interest of the employer. *Id.* at 713 citing *NLRB v. Health Care & Retirement Corp. of America*, 511 U.S. 571, 573-574, 114 S.Ct. 1778, 128 L.Ed.2d 586 (1994). “When an employee exercises one of [the enumerated functions] with judgment that possesses a sufficient degree of independence, the Board invariably finds supervisory status.” *Id.* at 716, citing *Trustees of Noble Hospital*, 218 NLRB 1441, 1442 (1975). Further, “it is not required that the individual have exercised any of the powers enumerated in the statute; rather it is the existence of the power that determines whether the individual is a supervisor.” *Mountaineer Park, Inc.*, 343 NLRB No. 135, 176 LRRM 1378, 1380 (2004) citing *Arlington Masonry Supply, Inc.*, 339 NLRB 817, 172 LRRM 1437 (2003).

Here, the evidence and credible testimony established that Quinones held adequate supervisory authority in the areas of assignment and responsible direction, which required the exercise of independent judgment. Further, there is no dispute that he held that authority in the interest of the Company.

#### **B. Quinones Assigned Work to Fleet Center Employees**

The record evidence shows that Quinones, as Fleet Supervisor, “assigned” work to Fleet Center employees, as that term has been interpreted by the Board. In *Oakwood Healthcare, Inc.*, 348 NLRB 686, 689 (2006), the Board defined the term “assign” to mean the act of “designating an employee to a place (such as a location, department or wing), appointing an individual to a time (such as a shift or overtime period) or giving significant overall duties, i.e. tasks to an employee.” To “assign” for purposes of Section 2(11) “refers to the ... designation of significant overall duties to an Employee, not to the ... ad hoc instruction that the employee perform a

discreet task.” *Id.* Quinones had authority to assign, and did assign, work to Fleet Center employees consistent with the Board’s interpretation of that term.

For example, Luis Abril (“Abril”) was the only mechanic stationed to work at the Company’s Bolingbrook, IL location. (Tr. 391-92). He was stationed there during the summer months, to repair and maintain equipment and vehicles utilized by the landscaping crews working out of that branch. (Tr. 391-92). In the winter months, when those crews were not performing landscaping work, Abril was assigned to work at the Fleet Center shop in Bartlett. (Tr. 361-62). However, depending on specific needs throughout the winter season, Quinones would assign Abril to work at Bolingbrook (instead of at Bartlett) to service equipment there, or to perform preventative maintenance (“PMs”). As a specific example, on Friday, February 5, 2021, (the time of the year when Abril was stationed at the Bartlett shop) Quinones sent Abril a text message instructing him to work the next day, Saturday, February 6, 2021, at the Bolingbrook branch instead of Bartlett. (Tr. 442-47; Er.Ex. 8, pp.1-2 (text message of Friday, 2/5/21 from Quinones to Abril: “Buddy, work tomorrow in Bolingbrook”). Importantly, that same text also clearly demonstrates that Quinones was assigning Abril not only to work in a different location, but also was assigning him to work Saturday overtime work that Abril testified had not already been scheduled. (Tr. 505-06; Er.Ex. 8, pp.1-2). Likewise, on December 13, 2021, Quinones sent Abril text messages that read: “Hey, buddy, stay over there” and “Don’t come to Bartlett.” (Tr. 453-454, 484-85; Er.Ex. 8, p.8). Again, this was the winter, when Abril otherwise was assigned to work at Bartlett. Abril followed Quinones instructions and worked in Bolingbrook. (Tr. 485). Quinones followed that message with messages the next day that included lists of vehicles and equipment that he wanted Quinones to perform PMs on. (Tr. 485-487; Er.Ex. 8, pp.9-11). Abril understood that the list that Quinones texted him were an order to

complete the PM work on the list and he complied with that directive. (Tr. 487-88). Had Quinones not sent him that list, he would not have performed that PM work. (Tr. 488).

Another example of Quinones assigning Abril to work previously unscheduled Saturday overtime is the text message of Friday, 4/8/22 from Quinones to Abril that read: “Buddy, yes, you can work tomorrow [Saturday]”). (Tr. 462; Er.Ex 8, p.12 (4/8/22 text from Quinones to Abril). Abril complied with the assignment to work Saturday overtime, and did so whenever Quinones made such an assignment. (Tr. 462-63).

Abril also testified that even when he received a PM list from Quinones, he (Abril) was not authorized to call vehicles back in from the field for the purpose of performing PMs, but could only perform the needed PMs on any of the vehicles that happened to be at the branch at that time, or were otherwise in for some other repair. (Tr. 528-29). Abril testified that because much fewer of the branch vehicles are utilized out in the field on the weekend, he would sometimes request to perform PMs on Saturdays in order to get caught up. (Tr. 529-30). To make that request, he would call Quinones who would either approve or disapprove Saturday overtime to complete the PMs. (Tr. 516-17, 530-31). Abril would work the requested Saturday overtime, only if authorized by Quinones. (Tr. 530-31).

Similarly, Rafael Torres, who was the shop’s delivery driver until sometime in the spring of 2022 when he became a small engine mechanic, testified that Quinones would assign him to perform PMs on fleet vehicles. (Tr. 312-16). At that time, even though he was a driver and not a vehicle mechanic, Quinones directed and assigned Torres on multiple occasions to complete PMs. (Id.). After Torres moved to the position of small equipment mechanic in early 2022, Quinones more frequently directed Torres to perform PMs, both at the Bartlett shop and by sending him to perform PMs at various branch locations, with varying frequency depending on

need. (Tr. 370-71). Torres testified that Quinones would give him a list of vehicles and direct him to perform PMs on the listed vehicles. (Tr. 335-36, 354-56). Torres understood that Quinones was instructing him to perform PMs on as many of the vehicles on the list as he could complete that day. (Tr. 335-36, 354-56, 370-71). If Quinones had sent him to a branch to perform PMs and he needed to stay late to complete a PM, Torres would contact Quinones for approval of the overtime and Quinones would decide whether he should stay late or not. (Tr. 355-56). Torres testified that after becoming a small equipment mechanic, Quinones directed him to perform as many PMs as Quinones had directed any truck mechanic to perform. (Tr. 371-72). For Torres, an assignment to perform PMs, whether in the Bartlett shop or at a branch, was a significant deviation and reassignment from his otherwise normal duties as a small equipment mechanic, which did not involve working on trucks.

Quinones also was involved in planning scheduled overtime hours. Approximately on a monthly basis, Fleet Center employees were informed in a group meeting of the framework of their hours for the upcoming month, including any planned or scheduled overtime. (Tr. 226-27, 888-89). Prior to that meeting, Bitler would discuss with Quinones to discuss the needs for the upcoming month, address department goals and priorities, seasonal changeover, etc. (Tr. 183, 226).<sup>4</sup>

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<sup>4</sup> Quinones' testimony on the topic of his input into the planning and scheduling of planned overtime was all-over-the-board and non-sensical. It should be found not credible. Specifically, he testified that Bitler did specifically seek his input in planning and scheduling the overtime because of Quinones' specific knowledge of the employees and their skills and his overall experience in the department. (Tr. 886). He then testified that Bitler never took his input or recommendations seriously, though he could not explain why, then, Bitler had asked for his input. (Tr. 886-87). He then stated that even though Bitler asked for his input, he never offered any. (Tr. 957-58). He then said that it was only at the actual meetings where Bitler sought his input, but he never gave it. (Id). And, finally, he testified that Bitler sought all the mechanics' input (not just Quinones') at the meetings, but Bitler did not listen. (Id). However, the other Union witnesses contradicted Quinones further by stating, in lockstep, that Quinones had no other role at the group meetings except to act as Bitler's interpreter. (Tr. 629, 693). In short, the Union's testimony on the topic is not credible whatsoever and should be cast aside.

The credible testimony of Bitler, Torres and delivery driver Rogelio Vega (“Vega”) demonstrates that Quinones also was responsible for approving time off requests for Fleet Center employees. Bitler testified that all time off requests for Fleet Center employees needed to be approved by Quinones before Bitler would process. (Tr. 81). Bitler testified that because Quinones was responsible for the day-to-day operations in the shop, it was up to him whether an employee could take time off. (Tr. 81-82). He testified that if an employee came directly to him to request time off (whether a full day, multiple days, or partial day) he would ask the employee if they had cleared the request with Quinones. (Tr. 229). If they had not, he would have the employee do so; if they had, and Quinones had approved, Bitler would process the time-off paperwork. (Tr. 229). Bitler understood the process because he did the same when he was in the role as supervisor. (Tr. 81-82).<sup>5</sup> Even though Bitler was the manager who ultimately signed the time-off paperwork, he testified that Marcos’ input “carried all the weight” as to whether or not a time-off request was granted. (Tr. 229). Accordingly, in the situation of granting time-off requests, even if Quinones is not considered to have “assigned” employees the time off, he effectively recommended approval of the time off, which also qualifies under Section 2(11) as a supervisory function. *See, e.g., Woodman’s Food Market, Inc.*, 359 NLRB 1016 (2013) (ALJ finding supervisor status due to effective recommendations on whether to retain probationary employees, which were adopted without any independent investigation). Here, Bitler adopted Quinones’ approvals to allow employee time-off requests, with no independent investigation.

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<sup>5</sup> Again, Quinones and the Union witnesses testified to the contrary, but not in a credible way. Bitler would be away from the shop for 2 days per week on average. It makes little sense that if an employee needs to leave early on a specific day when Bitler was out of the shop (which is 40% of the time) that they would not be able to get such a request considered, let alone approved. In their attempt to paint Quinones as wholly unrelated to the supervision of the shop, the Union and its witnesses have taken a position that results in an unworkable practice. The most the Union witnesses would allow was that they utilized Quinones as their translator for seeking time off requests through Bitler—and that Quinones helped them fill out the written form. (Tr. 691-92).



Torres' corroborated the procedure Bitler described. He testified that whenever he needed to request time off, whether full days or to leave early, he first made that request of Quinones. (Tr. 319-22, 357-58). Only after getting approval from Quinones, would Torres go to Bitler or the Fleet Administrator to get a time-off request form. (Id). If Quinones would have denied his request, he would not have filled out a form. (Id). Likewise, Vega testified that if he needed time off, or to leave early, he first approached Quinones because Quinones "was the person that could either say yes or no." (Tr. 553). Vega stated that he asked Quinones' permission because he was the "team leader and also the shop supervisor." (Tr. 554). Like Torres, only after Quinones approved Vega's time off would he go to the office and fill out a form. (Tr. 553-54). In situations where Vega requested to leave early, he also requested approval from Quinones. In those situations, Quinones would give Vega approval on the spot—Quinones did not confer with Bitler before approving Vega could leave early. (Tr. 554-56).<sup>6</sup>

Importantly, from the very beginning of his employment in April 2022, Vega was informed that Quinones was the supervisor of the shop. (Tr. 541-42; 590). In fact, on his first day of employment Bitler told him to check with Quinones as "he was going to tell [Vega] where to start working." (Tr. 590-91). The other shop employees told Vega that Quinones "was the one who organized the personnel and machinery to be worked on" and who "would send [Vega] out on deliveries." (Tr. 541). They also told Vega that Quinones was the individual who set "the priority of ... the work coming and going from out of the shop. (Tr. 542). In fact, at the time of

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<sup>6</sup> Quinones and the Union witnesses testified in lockstep that they never requested time off from Quinones, but only went to Bitler. First, however, regardless if that is true, it still remains that Torres and Vega requested, and gained approval of time off requests from Quinones. There is no requirement that Quinones be the only individual with that authority—just that he possessed that authority. So, his approval of Torres and Vega's requests would still show he possessed, and exercised, supervisory authority. Moreover, again, with Bitler focused on larger Fleet issues such as vehicle and equipment purchases and registration, and fuel and usage taxes, etc., and the fact that it is conceded he spend at least 2 days/week out of the shop, it is simply not credible that all time off requests, and all impromptu requests to leave early were funneled and approved by Bitler. The Union's testimony makes little practical sense and would be impossible operationally.

his hire, before he was issued a Company phone, Vega listed Marcos Quinones in his phone contacts as “Marcos Manayer Mechanics,” meaning “Marcos the manager.” (Tr. 565-66; see also Er.Ex. 9, text messages between Quinones to Vega under that contact heading).

### **C. Quinones Responsibly Directed the Fleet Center Employees**

Also in *Oakwood Health Care*, the Board defined the team “responsibly to direct” as follows: “If a person on the shop floor has men under him and if that person decides what job shall be undertaken next or who shall do it, that person is a supervisor, provided the direction is both “responsible” and carried out with “independent judgment.” *Id.* at 689. The Board held that for direction to be “responsible” the person directing the performance of the task must be accountable for its performance. *Id.* at 690-91. Accountability may be shown by either negative or positive consequences to the putative supervisor’s terms and conditions of employment as a result of the putative supervisor’s performance in the direction of others. *See, e.g., Golden Crest Healthcare Center*, 348 NLRB 727, 731 (2006); *Peacock Productions of NBC Universal Media, LLC*, 364 NLRB 1523, 1526 (2016). Here, there can be no doubt that Quinones, in his role as Fleet Supervisor both possessed the authority to direct the Fleet Center employees and was held accountable therefore. As described below, the evidence demonstrates that not only was Quinones given the authority to direct the Fleet Center employees, and to ensure their work was properly performed, but he continuously exercised that authority.

#### **1. Quinones Directed PM Work**

The documents admitted at the hearing, supported by the credible witness testimony, establish that Quinones was responsible for directing the preventative maintenance (“PM”) work to be performed on the Company’s vehicles. PM work generally involves performing an oil and filter change, greasing/lubing, and conducting a vehicle inspection. (Tr. 487). The Fleet Supervisor Job Description clearly states that it is the supervisor’s responsibility to “[d]elegate

tasks amongst mechanics to ensure timely ... P/M's." (Er.Ex. 4, p.1). Moreover, in the 2021 performance evaluation Bitler gave Quinones, which Quinones signed on July 9, 2021, Bitler instructed Quinones that, while the daily use of vehicles in the field can make it difficult to keep up with PMs, timely performance of PMs was something that "continues to need to improve." (Er.Ex. 4, p. 2). Bitler continued, "Getting this done will require strong communication to the branches, and strong communication to the mechanics.... Ensuring the P/M's are done on a timely basis will help reduce downtime and provide the opportunity to check the vehicle for repairs that may be needed." (*Id.*)

The uncontroverted testimony established that roughly once per month, Bitler printed a list of PMs that were coming due, or were past due, from a company software program. (Tr. 233). Bitler then gave the list to Quinones or left it for Quinones at Quinones' toolbox. (Tr. 49-50, 714). It is also uncontroverted that Bitler thereafter gave Quinones no further direction as to when, where, or by whom those PMs are to be performed. (*Id.*)

Thereafter, Bitler expected Quinones to manage the timing and completion of the PM services. The job description, performance evaluation, and incentive pay packages (described above) that Bitler gave Quinones are all consistent with it being Quinones' responsibility to manage the PM services and PM schedule in his role as Fleet Supervisor. The testimony of Rafael Torres and Luis Abril (described above) supports that Quinones did just that. Both Abril and Torres testified that, generally, unless Quinones instructed them to, they did not perform PMs. (Tr. 311). Abril also testified that even when he received a PM list from Quinones, he (Abril) was not authorized to call vehicles back in from the field for the purpose of performing PMs, but could only perform the needed PMs on any of the vehicles that happened to be at the branch at that time, or were otherwise in for some other repair. (Tr. 528-29) Because of this,

Abril, as described above, would contact Quinones to inform him if he was unable to complete the listed PM as instructed. Abril testified that because fewer of the branch vehicles are in the field on the weekend, he would sometimes request to perform PMs on Saturdays. (Tr. 529-30) To make that request, he would call Quinones who would either approve or disapprove Saturday overtime to complete the PMs. (Tr. 530-31).

Quinones denied he directed Abril or Torres (or any other employee) to perform PMs, but his testimony, like the testimony of the Union's other witnesses on this subject, was not credible for several reasons. First, Quinones stated that PMs "never occurred" at all because they never had enough oil or grease to perform them. (Tr. 900). However, he thereafter contradicted that assertion, as did every other witness who testified on the subject, by testifying that, in fact, PMs regularly were performed. (Tr. 900-01). Quinones agreed with Bitler that, approximately each month, Bitler would give him the list of PMs to be performed, and if Quinones was not available, Bitler would leave the list on Quinones' toolbox. (Tr. 902-03). However, Quinones testified that, after he received the list he never instructed any mechanic to perform a PM and never so much as instructed any mechanic to even look at the list. (Tr. 902-03). Instead, he testified that once the list was placed at his toolbox, the truck mechanics<sup>7</sup> knew to seek out the list because they were the ones who would perform the oil changes. (Tr. 903). He testified it was up to the individual truck mechanics to "take the initiative to start working on the PMs." (Tr. 945)

Quinones' testimony makes no logical sense. In many instances, the trucks that need PMs need to be coordinated with the specific branches to be brought to the Fleet Center—they are not just all parked in Bartlett waiting for PMs. (Er.Ex. 4, pp.1-2). It was Quinones whose job description required him to manage the timely performance of PMs. (Er.Ex. 4, p.1). The Company gave him an incentive pay plan directly tied to the timely coordination and

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<sup>7</sup> In the transcript, the term "truck mechanics" was improperly transcribed as "front mechanics." (Tr. 903).

performance of PMs. (Er.Ex. 4, p.3). Why would it do that if it was not Quinones' responsibility to manage and direct the mechanics to perform the PMs? Quinones conceded that as the supervisor, Bitler told him that he could be eligible for incentive pay if the shop employees did their work on time. (Tr. 921). Later in his testimony, however, he claimed to have not heard of any such incentive pay plan and that though he signed the plans, he did not understand them.

Importantly, Jose Romo, a Union witness, testified that the list itself was not marked or updated when a mechanic completed a PM; rather, the PM service sheet was filled out and turned in to Fleet Admin. (Tr. 688). Without any update to the list, however, the mechanics could not know which of the PMs had been performed and which had not. The system only works if Quinones, consistent with his job duties and his incentive pay plan, actually directed specific mechanics to perform specific PMs, so there would be no overlap or gaps. Likewise, because PMs also would be performed at the individual branches, it would again make no sense for Bitler to leave a list for Quinones, just to later go and instead give specific instruction to a mechanic to travel to a branch to perform a PM, and no witness testified that any mechanic was authorized to take it upon himself to travel to another branch to perform PMs. Moreover, truck mechanic Romo testified that Quinones would at times give the PM list directly to Romo, or leave it on Romo's toolbox. (Tr. 687) That directly contradicts Quinones' testimony that he never gave the list to any mechanic or even instructed any mechanic to look at it. In short, the Union's witnesses' testimony on this topic was not only self-serving and self-contradictory, but would result in a system that would be impossible in practice. Without someone coordinating both the list and the availability of the mechanics and vehicles (which were Quinones' duties as listed in his job description and evaluation—and upon which he was incentivized to complete

through his incentive pay package) the PM list could not ever be completed. The Union's witnesses were not credible on this subject.

## 2. Quinones Directed Repair Workflow

The evidence also establishes that Quinones directs the day-to-day repair activities of the shop mechanics. He does this for the general flow of work in the shop, as well as for urgent requests that may come through from the managers of the branches or the landscaping crew supervisors. With respect to the general flow of repair work, typically equipment comes into the Bartlett shop from the various branches that is in need of repair. The Fleet Administrator, Katie Bryant, keeps a running Excel spreadsheet for the equipment from each of the branches once information is received from the branches about the issues. (Tr. 935-36). She and Quinones meet to go over the list in detail, almost every day. Those meetings take roughly an hour. In those meetings, Quinones supplies information about the status of each repair on the list—giving information as to whether it is progressing, whether parts are needed or on order, and any other issues. He also informs Bryant which repairs have been completed. Bryant updates the list with that information and leaves the list with Quinones. Bryant testified she leaves the list with him because he is responsible for managing the workflow and assigning out and overseeing the work. Bryant's understanding is consistent with Quinones' job description and with what Quinones testified he understood when Jeff Sebert first told him of his promotion to Fleet Supervisor: that he was in charge of taking care of the work of the entire shop group, and making sure the mechanics completed the work.

Despite acknowledging he meets with Bryant to go over the list, Quinones testified all he did was inform her of completed work. (Tr. 937-39). He did not explain how he would know the status of all that work, if he was not overseeing and directing that work. He then started on another series of self-contradictory statements related to his involvement with the list. He stated

that he was too busy to look at the list, but that the list would go to the individual small equipment mechanics (“Octavio, Rapahel and Mariano”). (Tr. 939) He then conceded that it was not Bryant, but he himself, that would give the list to those mechanics because, he first testified, he was too busy to address the items. He then testified it was not his responsibility to manage the list and the workflow because Jeff Sebert had instructed him to be a mechanic. He then was forced to concede that Sebert had in fact instructed and authorized him “to be a shop supervisor and also a mechanic,” and understood that his responsibility was to make sure the work of the shop group was taken care of. (Tr. 940-41). He thereafter moved the goalposts again by claiming that despite the owner giving him that position, his understanding of that role, and his receiving a raise to do that role, that Bitler prevented him from supervising. (Tr. 941-42). He could only come up with one alleged example of Bitler’s alleged prevention: that one time Bitler had decided a repair on a specific truck did not need to be performed. (Tr. 941-42). Once again, Quinones’ testimony regarding this issue, like many others, simply is not credible.

It is clear that Quinones managed the flow of repair work through the shop and directed the mechanics to complete that work. He testified that when he came in for the day, that he would look around at what all the mechanics were doing and would help them. If his role was as he tried to testify (he was just a regular mechanic like all the others), what reason would he have to start his day in that fashion? It is clear his job was to oversee and direct the work in the shop and that he understood as much.

### 3. Quinones Directed Urgent Repair Work

Moreover, frequently branch managers or crew supervisors would call or email to escalate a repair. Part of Quinones’ job description was to handle such communications with the branches and, as described above, manage with workflow. (Er.Ex.4, p.1) When Bitler or Bryant would receive an email seeking an urgent repair, that email was printed out and brought to

Quinones. If Quinones was not directly available, the email was left on his toolbox. (Tr. 794) Typically, Bitler made no notes on the printed email. He either handed it to Quinones or left it at his toolbox. After that, it was up to Quinones to figure how to get the repair done, and who would do it.

Torres testified that Quinones often pulled him off a job he was working on to do some other more urgent repair work. (Tr 360) Abril also testified that Quinones would contact him to instruct him on what repair work was needed in a certain priority. (Tr 416) Bitler testified that it was Quinones' responsibility to figure out how, when and by whom to get those urgent repairs done.

Quinones, again, gave changing and illogical testimony on this subject. He testified that that he only rarely was directly contacted by branch or crew supervisors about urgent repairs. However, again, that was part of his job duties. Both Bitler and Bryant testified Quinones spent much time on the phone in such communications. Bitler stated that he would get emails for urgent repairs, typically, only after there had been an attempt by the branch supervisor to contact Quinones first. Quinones then testified that once Bitler printed an email with urgent repairs, he would bring them to other mechanics, not just to Quinones. No other witness corroborated that anyone other than Quinones was given such emails. Quinones then attempted to downplay his role once he was given an urgent email. Once forced to concede the emails were given to him, or left for him on his toolbox, he stated that other mechanics would pick them and then go to Bitler for direction.

When asked why Bitler would bring go out to the shop floor to leave the email with him, only to have a mechanic bring it right back to Bitler for direction, he had no real explanation. Rather, he then backtracked and conceded that he would hand out the emails to individual



mechanics. Then trying to downplay his involvement, he gave testimony that was not supported by any other witness from the Company or the Union. Under questioning from the Hearing Officer, he testified that for each urgent email, he would gather the mechanics and they would all start performing the work required together, with no specific direction from Quinones. He testified that if the urgent work was easy, they would just go ahead and all work simultaneously on such easy work; if the work was medium in complexity, they would all work together in the same way and try their best to do the repairs; if the work was complex, he would get Bitler's involvement. Considering he gave this testimony only after backtracking, and that none of the Union's other witnesses testified to this approach (they testified that Quinones would direct them to do the work, but say it was on Bitler's orders) shows that the Quinones and the Union's witnesses were not credible and were intentionally trying to downplay Quinones' supervisory role. Moreover, Quinones never explained why he, instead of any other mechanic, was always the conduit for work assignments (whether general flow of work on the equipment list, or urgent matters).

Moreover, one such email was put into evidence. It was included in a text message that Quinones sent to Abril to perform certain work on February 6, 2021. (Er.Ex. 8, p.2-3). Interestingly, not only does Quinones pass along the email to Abril with no indication that Bitler had specifically instructed that Abril do the work, but the email, which was sent to Bitler, was also cc'd to Quinones, among others, whose names are in the CC line. (Id.) Bryant is also listed, as is Steve Pearce, Bitler's superior. However, the names of no mechanics appear. If, as Quinones testified he rarely had any communications with managers of other branches, it would be odd that the one email in evidence shows that a branch manager copying him on an email with needed repairs. In short, Quinones' and the Union witnesses testimony is just not credible.

#### 4. Quinones Directed the Work of the Drivers

The two employees who worked, at any relevant time, as the delivery driver for the shop both testified how Quinones would direct their work on a daily basis. Torres testified that although he had a regular route for going to/from specific Company branches, Quinones would frequently divert him to other branches, to pick up parts and or other supplies. Likewise, after Vega took over the driver role, he also testified that Quinones would call or text him and divert him to make unscheduled trips and stops. They both testified that they always complied with Quinones' direction as he was their supervisor. Neither of them testified that Quinones ever told them they were being diverted to other trips on the orders of Bitler. And, in the text messages introduced at the hearing between Quinones and Vega, many of which contain directives to Vega on going to parts vendor, making special trips to Sebert branches, or to take or pick up specific items, NONE contain any mention that the directives were made at the direction of Bitler.

Moreover there were times when the driver was out on a delivery when a parts pick up was ready and need to be picked up. In those instances, if a call came to Bryant from the vendor, she would go to Quinones and inform him. He would tell her that he would send one of the mechanics—whose typical job is not to make parts pick ups.

#### 5. Quinones Directed Mechanics Related to Parts Management

The evidence shows that Quinones had deep involvement in the ordering and management of parts. He was the only shop employee who could order parts without first getting authorization from Bitler. In fact, Quinones could order up to \$1500 on each part order without any authorization. Other employees who placed parts orders needed to get authorization for each and every parts order they made, regardless the amount.

Quinones also was responsible for making sure there was no parts waste. He was responsible for making sure the monthly parts orders were kept within budget. To this end, he

was responsible for making sure mechanics were not just “throwing parts” at a problem, but they were properly diagnosing issues so that parts usage was not wasteful. He also was responsible for shopping for best prices on parts and for keeping track of inventory and sending back any unneeded parts for credits.

While he claims that he did not order parts for other mechanics that, again, is not credible. Abril previously had certain authorization to buy limited parts for Bolingbrook, but that authority was terminated in the beginning of 2022. He testified that thereafter he ordered parts through Quinones who would either send parts from Bartlett inventory or place an order. This was not contradicted by Quinones. Torres testified he went to Quinones for any parts orders he needed and Quinones would place the order. Likewise, Bitler and Bryant testified that a large part of Quinones’s duties was ordering and managing parts. Even the Union witnesses all testified that Quinones spend chunks of time on the phone ordering parts (just not for them).

Again, Quinones job description and incentive pay were tied directly to his managing the parts for the entire shop. He testified he was fully aware he could get incentive pay for keeping parts costs down. He in fact, received a bonus in August 2020 for doing just that. This clearly demonstrates that he was responsible for the parts usage and orders of all the mechanics.

6. Quinones Directed the Overall Cleanliness and Organization of the Shop

Quinones understood he was responsible for keeping the entire shop clean and organized. He understood that meant that he was responsible for whether or not the shop employees kept their areas, and the overall shop clean. His job description included that function, and his 2021 evaluation made it a point to stress that he improve on the cleanliness of the shop and or schedule cleaning. Torres and Vega, at the times when they were acting as the delivery driver, with no assigned area in the shop, testified that nonetheless, Quinones would assign them, during any idle time, to clean the shop or to organize certain areas of the shop. Quinones first testified that

the mechanics know to clean, later conceded that he understood managing the cleaning was his responsibility, but that he only did so when Bitler specifically held him accountable to do so. But this, coupled with the comments in his evaluation to improve cleanliness, demonstrates that he was being held accountable for whether or not the mechanics kept the shop clean.

#### 7. Quinones Was Accountable for the Work of the Shop Employees

Quinones was certainly accountable for his direction of the Fleet Center employees. Accountability can be shown by either positive or negative consequences for the supervisor in the performance of the employees. *See, e.g., Golden Crest Healthcare Center*, 348 NLRB 727, 731 (2006); *Peacock Productions of NBC Universal Media, LLC*, 364 NLRB 1523, 1526 (2016). Here, Quinones' accountability took both positive and negative forms. First and foremost, Quinones was eligible for incentive pay depending on how well he directed the shop employees in various aspects of their work as measured in certain department-wide metrics. As discussed above, at various times in his employment as Fleet Supervisor, he was eligible for a bonus if he kept mechanics' labor costs within budget. This demonstrates his accountability for managing the mechanics' schedules and overtime and for making sure they worked efficiently. He in fact, achieved this bonus in August 2020.

He also was eligible for a bonus for ensuring PMs were completed timely. Again, this fully demonstrates he was being held accountable for the work to be performed by the other mechanics. The more efficient they worked, the more bonus he would receive. Moreover, he was negatively affected by this component as well. His 2021 evaluation stressed that that area of the Fleet Center operations improve. Also, Quinones was eligible for monthly bonuses for keeping parts costs within budget. Here, he was accountable for the mechanics' use of parts, and making sure they were not overusing parts, without properly diagnosing a problem.

Quinones attempted to say that he never understood his incentives or only learned of them during the hearing. However, this again was simply shifting, self-contradictory testimony. He initially testified, before even being shown the incentive pay plan as an exhibit, that he was aware, because Bitler explained to him, that he personally could earn incentives for saving on parts, making sure the shop mechanics got their work done on time, and if the mechanics' hours in the shop were within budge. (Tr. 921-22). He later feigned complete ignorance of those incentives, claiming Bitler never explained to him and that he could not understand that conversation in English, nor can he read any English. (Tr. 926-29). However, as will be discussed below, Quinones' claim of lack of adequate English skills is not credible for many reasons. He clearly was accountable for the direction of the mechanics' work, and he fully understood that, from the meeting with Jeff Sebert when he was promoted through the remainder of his employment.

**D. Most of Quinones' Time Was Spent Supervising—Not on Performing Repair Work**

Even more telling as to Quinones' responsibility to ensure the work of the Fleet Center was properly being done by others is the amount of time Quinones himself spent doing specific repair work—which was not much. The mechanics testified that all of the Company-owned small equipment and vehicles contained a bar code that the mechanic was required to scan on his phone while performing a repair to that item. Quinones testified he was required to do so and that he followed that directive. Accordingly, his time records show the amount of time that he was scanned in doing actual repair work. (Er.Ex 13) When he was not doing repair work, but was engaging in other things, like parts ordering, communicating with the branches on status of repairs, meeting with Bryant to go over the status of the equipment list, managing the

coordination of vehicles to be brought in for PMs, etc., he did not scan but, rather, entered into his phone an entry that listed “CORPORATE (IDL18)” in the time application on his phone.

The time detail reports for all shop employees from 2/21/2022 were entered into evidence and they showed that Quinones spent very little time scanned in for “REPAIRS” and very much time for “CORPORATE IDL18.” (Er.Ex 13) As two representative samples from the report, in January 2022 (during the winter repair season), Quinones logged a total of 208.2 hours under CORPORATE IDL18. By contrast, for that same month, he logged only 39.1 hours doing “REPAIRS,” “PM MAINTENANCE” or any other punch code. Interestingly, 36.0 of those REPAIRS/other hours were performed on Saturdays or Sundays and not during the normal workweek. (Er.Ex. 13)

Similarly, in May 2022 (when the summer landscape season is fully underway, and which was the last full month of his employment prior to the election, Quinones logged 160.6 hours under CORPORATE IDL18, while being scanned in for REPAIRS or any other entry for only 28.3 hours. (Er.Ex 13) Contrary to his testimony, and the lockstep testimony of the other Union witnesses, that at least 80 percent of his worktime was spent doing actual repair or PM work, his actual time records show he spent relatively very little of his time doing repairs, PMs or other mechanic work. This, alone, should render Quinones’ and the Union witnesses testimony not credible on an overall basis.

**E. Quinones Exercised Independent Judgment in the Assignment and Direction of the Fleet Center Employees**

Quinones was required to use his own discretion and independent judgement in directing the Fleet Center employees. There was no manual or other set of written procedures that Quinones was required to follow. Bitler gave Quinones no specific instruction as to how to make any of the various determinations needed to decide what specific repairs would be handled

by any specific employee. In fact, looking to the management of the PM process as an example, the evidence shows that with 200+ vehicles across at least 7 branch locations over a wide geographical area, coordinating the logistics of performing PMs can be quite involved. There were many circumstances and factors that Quinones was required to consider and weigh, without any set procedure or direction: which employee should be selected to perform any specific PMs, when to arrange for specific PMs to take place, whether PMs would be performed by bringing vehicles from branches to Bartlett or whether a mechanic would be sent out to a branch; and coordinating and arranging for the specific pieces of equipment to be made available or taken out of service so the PM could be performed. (Tr. 115-16; 249) ALL of those circumstances and factors had to be determined by the Fleet Supervisor on his own. (Tr. 115-16; 249) The weighing and balancing of all these factors to properly arrive at who was going to complete a set of PMs, where those PMs were going to take place, when those PMs were to take place (based on communications with branch managers and/or maintenance crew supervisors to arrange vehicle availability) required independent judgment of the supervisor that can in no way be considered “routine” or merely “clerical.” *See, e.g., Woodman’s Food Market, Inc.*, 359 NLRB 1016 (2013) (ALJ found independent judgment sufficient when there were no superior direction or policies detailing how putative supervisor was to handle and direct the various tasks to completed by the employees in lube center, necessitating use of independent, and non-routine or clerical judgment) (upheld on other grounds).

Moreover, Quinones’ understood that Bitler looked to him to utilize his understanding of the individual employees’ capabilities and his knowledge of the shop and its operations, based on his experience and expertise, all of which played a role in how Quinones evaluated work assignments, direction of the employees, and scheduling. Even Union witness Avila understood

that Quinones would determine what work a truck mechanic may be assigned, when an urgent email came in, based on Quinones own assessment of the work that needed to be done and his knowledge of the skills and abilities of the mechanics. (Tr. 793-94 (discussing how frequently Quinones would assign urgent matters to him: “Not a lot. Usually ... Marcos [Quinones] will give the email to Romo because he has more experience and especially if there were some kind of special work that needed to be done in a truck.”)).

Quinones’ and the Union’s witnesses attempted to downplay the discretion required in managing the Fleet Center employees’ performance of PMs on a timely basis. Their testimony in this regard was nonsensical and non-credible. In an thinly veiled effort to downplay Quinones’ role in management of the PM process, the Union witnesses testified either that: (a) no one was in charge of PMs—each mechanic simply took it upon himself to seek out the PM list and decide on their own, to stop performing repairs and to perform PM work ; or (b) that Bitler was the one who instructed them to perform PMs and when and where to do so. The testimony of the Union witnesses on this point is self-contradictory: on the one hand, the each mechanic took it upon himself to decide what PMs to do and when to do them; on the other, Bitler instructed them which PMs to do and when. In the Union witnesses’ obvious attempt to remove Quinones from any semblance of decision making, they have painted an inconsistent, nonsensical picture of the operations of the Fleet Center that cannot reasonably be credited.

#### **F. Quinones’ Held His Authority in the Interest of Sebert**

The Supreme Court has held that acts within the scope of employment or on the authorized business of the employer are in the interest of the employer. *NLRB v. Health Care & Retirement Corp. of America*, 511 U.S. 571, 578 (1994) (citing *Packard Motor Car Co. v. NLRB*, 330 U.S. 485, 488–489 (1947)). Here, all of the supervisory acts taken by Quinones: assigning work, overtime, and time off; directing repair work and PM work; managing the workflow of the



shop; managing parts; and keeping the shop clean and organized, were all taken solely in the scope of his employment as Fleet Supervisor in the interest of the Company.

**G. Secondary Indicia Supports a Finding that Quinones Was a Statutory Supervisor**

While certain aspects of Quinones' work do not fall directly into one of the twelve supervisory functions, nonetheless in conjunction with his assignment and responsible direction, they further support his supervisor status.

Specifically, it is uncontested that Bitler is out of the shop on average 2 days/week. In that time, the evidence shows that Quinones is the highest ranking employee in the shop and handles the oversight and management thereof. While paper documents alone typically cannot show supervisory status, here, in conjunction with the actual supervisory functions he did complete, Quinones' job description, incentive plan and evaluation support his supervisory status. Clearly the incentive plan shows he was "accountable" for the work of the shop employees, and his evaluation also shows that was being graded and evaluated on his supervisor work. Moreover, while the Union witnesses (other than Quinones) had what appeared to be rehearsed, lockstep testimony that they were never aware that Quinones had a supervisor title and were never so informed, the evidence shows that two of the Union's witnesses signed job descriptions upon hire that clearly stated they reported to Quinones. (Er.Ex. 7 (Mariano Flores) & Er.Ex.11 (Samual Avila). For his part, Quinones was fully aware of his promotion, and Torres, Abril and Vega all testified unequivocally that they were informed that Quinones was their supervisor. Vega specifically listed Quinones as "Marcos Manayer" in his phone contacts.

Moreover, Quinones was involved in the development and planning of the new software system to track equipment in the shop. Such involvement directly related to his work in managing the workflow and the repair work through the shop. While he claimed he did not

understand why he was there or what was said, it simply is not credible that Bitler had him attend if Quinones was not capable of providing meaningful input.

#### **H. Quinones Claimed Lack of Understanding Is Not Credible**

Quinones testified that he did not understand his authority as a supervisor because, in part, his English skills are poor. He testified that he only understands English when talking about mechanical repairs in the shop. He claimed he cannot read ANY English. However, the testimony and evidence establish that his English skills are more than satisfactory to have understood his supervisor role, his pay structure, and what was expected of him.

First, Quinones testimony on this front cannot be taken seriously. Every other Union witness testified that he was continually used as an English-Spanish translator. They testified he translated for Bitler at the monthly scheduling meetings and when Bitler would give work assignments, or when they needed to request time off from Bitler. In fact, they made these statements in an obvious attempt to downplay that Quinones, himself, was giving those assignments, not simply translating. But how can Quinones have acted as such a translator when, he claims, he speaks so little English he did not understand his compensation (though he previously freely admitted that he did understand his incentives)?

Moreover, there was much testimony about Quinones being given emails, (which were in English) and then passing those emails to mechanics to perform certain tasks. Again, how could that be if Quinones reads NO English. He had a daily one-hour meeting with Bryant to go over the status of all open repairs. Again, how could he do that if he could not understand her?

More importantly, Quinones slipped up at least twice in his testimony. First, he answered one of counsel for the Company's questions without waiting for it to be translated, and gave his answer in English (Tr. 967: "Q: Every year?" "A: Not every year, but most of the time."). That is a very full answer for someone who claims to only understand English as it relates to

mechanical parts. Moreover, when counsel for the Company questioned Quinones on his 2021 performance review (Em.Ex. 4, p.2), counsel asked a question about whether Quinones understood the first listed “key point” for improvement (a directive to focus on scheduling and completion of PMs). Quinones responded “No. He would only tell us that that we was supposed to clean and that was it.” (“Tr. 960). Interestingly, despite his claim of being unable to read ANY English, although no question was asked about cleaning, the very next listed “key point” to improve was “shop cleanliness/Scheduled cleaning days.” (Er.Ex. 4, p.2). It is clear Quinones CAN read English and was simply reading ahead.

Based on the record as a whole, Quinones’ claim of not being able to understand most spoken and all written English should be seen as simply not credible. That should also cast a shadow over his entire testimony.

#### **IV. CONCLUSION**

For the foregoing reasons, it is clear that Quinones is a supervisor under Section 2(11) of the Act. The Hearing Officer should make such a finding and the matter should proceed to hearing on the remaining issue in the Employer’s objection.

Dated: September 14, 2022

**SEBERT LANDSCAPING COMPANY**

By: 

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## **ATTORNEYS FOR EMPLOYER**

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 13**

SEBERT LANDSCAPING COMPANY

and

Case 13-RC-295213

INTERNATIONAL UNION OF OPERATING  
ENGINEERS, LOCAL 150, AFL-CIO

**CERTIFICATE OF SERVICE**


The undersigned hereby certifies that he served a true and correct copy of the attached **POST-HEARING BRIEF OF EMPLOYER, SEBERT LANDSCAPING COMPANY** upon the following individual(s), via the methods described below, on this 14th day of September 2022:

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